

A
COMPENDIOUS
SYSTEM
OF THE
BANKRUPT LAWS,

By WILLIAM COOKE, of *Lincoln's-Inn*, Esq;
Barrister at Law.

seniam petimusque damusque vicissim.

L O N D O N :

Printed by His MAJESTY'S Law PRINTERS,

For EDWARD BROOKS, in Bell-Yard, near Temple-Bar,
MDCCLXXXV.

COMPENDIOUS

SPRINT



BANKRUPT LAW

By WILLIAM COOKE, of Lincoln's Inn, Esq.

Barrister at Law.

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LONDON

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MDCCLXXXV.

I am proud of this Opportunity to
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ferred upon me by my professional
Friends, in their very liberal Contri-
bution of Manuscript Notes, which has
afforded me an Opportunity of intro-
ducing many Cases that I trust will be
found a very useful Part of this Work.

It is incumbent upon me, however, to

SINCE the last Publication upon
the Subject of the following Sheets,
several very important Cases have been
determined, expedient to be generally
known; an Attempt therefore, to bring
into one Point of View the whole Law
concerning Bankrupts, will, I trust, be
considered as useful, and sufficiently ex-
cuse my Presumption, in offering the
present Publication to the World.

As the whole of the Bankrupt Law
is founded upon Acts of Parliament,
the better to obtain a clear and succinct
Arrangement of the Subject, I have in-
troduced as a Part of each Chapter, Ab-
stracts of the several Statutes that pecu-
liarly relate to its Contents.

P R E F A C E.

I am proud of this Opportunity to acknowledge the great Obligations conferred upon me by my professional Friends, in their very liberal Communication of Manuscript Notes, which has afforded me an Opportunity of introducing many Cases that I trust will be found a very useful Part of this Work. It is incumbent upon me, however, to apprise the Reader, that some of the Cases, for which no Authorities are cited, were taken by myself, if therefore, any of them should be considered as loose and imperfect, it must be those for which I alone am responsible.

WILLIAM COOKE.

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ERRATA.

Page 2, in the margin, after *Ex parte Baudier*, insert
Ex parte Cook, 2 P. W. 500.

7. l. 27, for *reately*, read *reably*.

45. l. 16, for *occasionally*, read *occasionally*.

46. l. 3, for *Kib*, read *Kib*.

180. l. 7, for *in*, read *or*.

195. l. 25, for *banrupt*, read *insolvent*.

221. l. 22, *dele and decre*.

The laws of England, capable of encouraging
 prodigality and extravagance, allow the benefit
 of the bankrupt statutes to none but actual traders;
 for as trade cannot be carried on without natural

credit, the contracting of debts is necessary; and
 hence, is not only justifiable, but necessary; and
 it, by accidental calamities, a merchant or trader
 becomes incapable of discharging his own debts,
 it is his misfortune, and not his fault.

INTRODUCTORY CHAPTER.

THE word *bankrupt* has been variously derived
 by different authors; Sir *Edward Coke* deriv-
 ing it from *banque* and *route*, which signifies a trace
 or track; so that, according to him, it means one
 whose bank is removed, and but a trace or mark
 left behind. But Mr. Justice *Blackstone* derives it
 from the word *bancus* or *banque*, which signifies the
 table or counter of a tradesman, and *ruptus* broken,
 denoting thereby one whose shop or place of trade
 is broken and gone; at the same time he takes no-
 tice of Sir *Edward Coke's* derivation, and further ob-
 serves, that the title of the first *English* statute con-
 cerning this offence "against such as do make bank-
 rupt," is a literal translation of the *French* idiom,
qui font banque route. But perhaps it can, in no case,
 be less necessary to investigate the etymology of a
 word, because the whole system of the bankrupt law
 is founded upon positive statutes; and no light can
 possibly be derived to the subject but what tends to
 elucidate the construction of them.

4 Inst. 277.

2 Black. Com. 472.

34 H. 8. c. 4.

INTRODUCTORY CHAPTER.

2 Black. Com.
474.

The laws of *England*, cautious of encouraging prodigality and extravagance, allow the benefit of the bankrupt statutes to none but actual traders; for as trade cannot be carried on without mutual credit, the contracting of debts to facilitate commerce, is not only justifiable, but necessary; and if, by accidental calamities, a merchant or trader becomes incapable of discharging his own debts, it is his misfortune, and not his fault. To the misfortune therefore of debtors, the law has given a compassionate remedy, but denied it to their faults; since at the same time that it provides for the security of commerce, by enacting, that every considerable trader may be declared a bankrupt for the benefit of his creditors as well as himself, it has also, to discourage extravagance, declared, that no one shall be capable of being made a bankrupt, but only a trader; nor capable of receiving the full benefit of the statutes, but only an industrious trader.

3 Atk. 817.
1 Atk. 77.
1 Cha. Ca. 275.
292.
Sel. Ca. Cha.
43, 46.
1 Atk. 209.
2 Vez. 327.

By the bankrupt statutes, the Lord Chancellor exercises a superintending and discretionary power, and may determine in a summary way; but notwithstanding this, the court governs itself, by way of analogy, to the usual and ordinary proceedings in the court of Chancery. But this power of the Chancellor to act in a summary way under a commission of bankrupt, is confined to transactions between the creditors, the bankrupt, and the assignees, and does not extend upon petition to the adjusting any demands that one assignee may set up against another, concerning a private agreement between

1 Atk. 88.

INTRODUCTORY CHAPTER.

•iii

between themselves, independent of the rest of the creditors.

Though the court can have no more power on a bill than on a petition, yet it is equally, if not more proper, that questions of importance should be brought before the court by way of bill; and it is frequently necessary, to adopt that mode of proceeding, to settle the demands of the creditors. 1 Atk. 72.

The Chancellor has power, upon a bankrupt petition, to send a case for the opinion of a court of law, and to direct an issue to try any litigated question, in which case costs generally follow the verdict at law. Cowp. 742. 1 Atk. 139.

All the acts concerning bankrupts make but one system of law, they are therefore to be taken together, and to be construed favourably for the benefit of creditors, and to suppress fraud; for though a bankrupt was formerly considered merely in the light of a criminal, and therefore a strict construction might be expected, in conformity to the universal practice of deciding upon penal statutes, at present the laws of bankruptcy are considered as laws calculated for the benefit of trade, and founded on principles of humanity, as well as justice. 1 Burr. 477. 1 Burr. 439. 2 Black. Comm. 472. 2 Black. Comm. 472.

The first statute noticing the crime of bankruptcy, was made against Lombards, who, after they had made obligations to their creditors, suddenly escaped out of the realm, it was therefore enacted, 4 Inst. 277.

INTRODUCTORY CHAPTER.

acted, "That if any merchant of the company so
 "knowledge himself bound in that manner; that
 "then the company shall answer the debt; so that
 "another merchant, who is not of the company,
 "shall not be thereby aggrieved nor impeached."
 But the first statute made concerning any *English*
 bankrupts, was 34 Hen. 8. which has been much
 altered by 13 Edw. and other subsequent statutes;
 whereon the law of the following chapters is
 founded.

CHAP. I.

Of the Commission.

BY the statute of 13 *Edw. c. 7. s. 2.* "The
" Lord Chancellor, or Lord Keeper, upon
" every complaint made to him in writing, shall have
" full power and authority, by commission under the
" Great Seal of *England*, to name, assign and ap-
" point, such wise and honest discreet persons as
" to him shall seem good, who, or the most part
" of them, shall take order for the bankrupt's body,
" lands and goods."

By 5 *G. 2. c. 30. s. 23.* *For preventing the taking
out commissions of bankrupt maliciously.* " No com-
" mission shall be awarded and issued out against
" any person, upon the petition of one or more
" creditors, unless the single debt of the creditor,
" or of two or more persons being partners, petition-
" ing for the same, do amount to the sum of one
" hundred pounds or upwards; or unless the debt
" of two creditors, shall amount to one hundred
" and fifty pounds or upwards; or unless the debt
" of three or more creditors shall amount to two
" hundred pounds or upwards; and the creditor
" petitioning for such commission, shall, before the

Of the Commission.

“ same shall be granted, make an affidavit, of
“ (being one of the people called *Quakers*) make
“ a solemn affirmation in writing before one of the
“ Masters of the High Court of Chancery, of the
“ truth and reality of such his debt; and likewise give
“ bond to the Lord Chancellor, Lord Keeper, or
“ Commissioners of the Great Seal for the time
“ being, in the penalty of two hundred pounds,
“ to be conditioned for proving his debt, as well
“ before the commissioners named in such com-
“ mission, as upon a trial at law, in case the due
“ issuing forth of the same shall be contested and
“ tried; and also for proving the party a bankrupt
“ at the time of taking out such commission, and
“ further to proceed on such commission. And if
“ such debt shall not be really due or owing, or
“ if after such commission taken out, it cannot be
“ proved that the party was a bankrupt at the time
“ of the issuing of the said commission; but on
“ the contrary it shall appear that such commission
“ was taken out fraudulently or maliciously, that
“ then the Lord Chancellor, Lord Keeper, or Com-
“ missioners of the Great Seal for the time being,
“ shall and may, upon petition of the party griev-
“ ed, examine into the same, and order satis-
“ faction to be made to him for the damages by
“ him sustained; and for the better recovery thereof
“ may, in case there be occasion, assign such bond
“ or bonds to the party so petitioning who may
“ sue for the same in his name.

By 5 G. 2. c. 30. §. 25. “ The creditor or cre-
“ ditors who shall petition for, and obtain any com-
“ mission

Of the Commission.

"mission of bankrupt shall be, and is, and art,
"hereby obliged at his, her or their own costs and
"expences, to sue forth and prosecute the same,
"until assignees shall be chosen; and the commis-
"sioners shall, at the meeting which shall be ap-
"pointed for the choice of assignees, ascertain
"such costs; and shall, by writing under their
"hands, direct and order the assignees to pay and
"reimburse such petitioning creditor the costs
"and charges, out of the first money or effects of
"the bankrupt that shall be got in and received
"under the commission."

And by 5 G. 2. c. 30. s. 45. "No commission
"of bankrupt shall abate by reason of the death
"of the king. And if it shall be necessary to
"renew any such commission by reason of the death
"of the commissioners named in such commission,
"so that a sufficient number of commissioners
"shall not be living who can act therein, or for
"any other cause; such commission shall be renew-
"ed, and but half of the fees usually paid upon
"granting or obtaining of commissions of bankrupt
"shall be paid for any such renewed commissions.

The Lord Chancellor, Lord Keeper, or Lords
Commissioners of the Great Seal by the foregoing
statutes being authorised to issue a commission
of bankrupt, when a creditor finds himself under
the necessity of obtaining such a commission, he
must proceed to strike a docket; which is done by
making an affidavit of his debt, and executing a
bond to the Great Seal. But this will not prevent

Of the Commission.

By order 14th
February, 1774.

Ex parte
Parsons. 1 Atk.
73.

2 Ch. ca. 192.

5 G. 2. c. 30.
f. 23.
Backwell's case.
1 Vern 153.

Ex parte Ward.
1 Atk. 153.

Backwell's case.
1 Vern. 153.

Beasley v.
Beasley
1 Atk. 97.

the issuing of another commission, on the petition of another creditor; unless the party striking the first docket seals his commission in four days exclusive of the day of striking the docket. Formerly a practice of entering caveats in the Secretary of Bankrupts-office prevailed, but they have fallen into disuse since *Lord Hardwick* expressed his disapprobation of them, because by that means an opportunity was given to persons against whom the commission was to be taken out, to make away with their effects.

The commission of bankruptcy must be founded on a petition, which, when supported by a proper affidavit of a debt, and the creditor entering into a bond as directed by the statute, the Chancellor is bound to grant; for the granting a commission is not discretionary, but a matter of right.

The affidavit made by the creditor on suing out the commission is general; nor does it mention the particulars by which a bankrupt becomes indebted.

A commission of bankrupt is considered as a statute execution, and when it has issued and the party declared a bankrupt, his death will not prevent the further execution of the commission. So if there is a joint commission against two partners, they must be each found bankrupt. And though one of them should die, the commission may still go on; but if one of the joint-traders be dead, at the time of taking out the commission, it abates, and is absolutely void.

Of the Commission.

It was formerly the practice, where there were several partners, to take out separate commissions against each, as well as a joint commission; but this has been since discountenanced, it being the common course of the court, upon petition, to make an order, for the separate creditors to come in and prove their debts under the joint commission, and that the assignees should keep distinct accounts of the several estates. And this Lord *Hardwicke* said might be done, because the assignment in the case of a joint commission is of the whole estate. But on the other hand, where separate commissions are taken out against joint traders, it seems to have been the opinion that joint creditors could not prove their debts under the separate commission, except for the purpose of assenting or dissenting to the certificate; but that they must proceed to take out a joint commission. Therefore, upon a petition stating that *R. Cox*, *John Oldknow* and *G. Lisart Cox* had been partners in a stocking manufactory at *Nottingham*, which partnership expired on the 1st *January 1779*; that finding their affairs in an embarrassed state, they joined on the 7th of *January* following in an assignment of all the partnership effects to trustees for the creditors—These trustees afterwards, and without the consent of *R. Cox*, assigned the effects, &c. to an uncle, and a brother of *John Oldknow* as trustees to get in the partnership debts, &c.—*R. Cox* afterwards traded separately and became a bankrupt; and a separate commission was issued on a subsequent trading—

1 Atk. 252.

Ex parte *Banister*
1 Atk. 98.

1 Atk. 252.

Ex parte,
Oldknow.
8 May 1789.

OF THE COMMISSION.

The second trustees now petitioned, alleging that R. Cox was indebted to the partnership for monies received by him, and left unaccounted for, and prayed an account of all dealings and transactions, and that they might be admitted to come in under the commission as creditors for what should happen to be due from Cox to the partnership.

The trustees had proceeded at law against Cox, and obtained judgment for a very large sum of money, but Cox in his affidavit sworn, that really and bona fide, he was not at all indebted to the partnership.

It did not appear there were any joint effects in the hands of R. Cox, and the question was, whether the trustees were intitled to a rateable dividend with other creditors under this separate commission.

Lord Loughborough said, these were joint creditors claiming to come in under a separate commission. All that can be allowed to joint creditors, is to prove their debts, so as to assent or dissent from the allowance of the certificate, and to come in on the surplus after the separate creditors are satisfied — which was ordered accordingly.

But perhaps cases may sometimes arise, in which the rule above laid down will not apply, for if there is both a joint and separate fund, and the assignees possess themselves of the joint property; if the separate creditors consent that the joint creditors shall come in *pari passu*, the general rule will not prevent the Chancellor making the order. For where a separate commission had been taken out against

Ferryman who was one of three partners; the joint creditors

Of the Commission.

creditors petitioned to prove their debts under the separate commission.

The Lord Chancellor said, as the present petition was consented to, he would make the order now upon the consent, and would leave the point whether joint creditors were intitled to come under a separate commission, to be decided upon more consideration.

And in another petition stating, that the bankrupt *Prior* was indebted to the petitioner by a promissory note for 110*l.* 18*s.* signed by *Prior* and *Stevens* and advanced by the petitioner to *Prior* and *Stevens*, on account of their having entered into partnership, and to assist them in carrying on the same. The said intended partnership never did take effect, otherwise than by their having issued several joint promissory notes or bills of exchange in the firm of *Stevens* and *Prior*. A commission of bankruptcy issued against *Prior*, and afterwards another commission against *Stevens*. It was admitted, there were no joint effects of *Prior* and *Stevens*.

The petitioner had been permitted to prove his debt under *Prior's* commission, and offered to do the same under *Stevens's*, but was refused by the Commissioners. But upon petition, it was ordered that the petitioner be at liberty to prove his debt, and be admitted a creditor for what he shall so prove, and be paid his dividends in respect thereof rateably, and in equal proportion with the rest of the creditors of the said bankrupt.

A trader having once had a commission of bankruptcy issued against him and proceeded upon, cannot be liable to a second, unless he obtains his cer-

Ex parte
Haydon, June
24, 1785.

Martin v.
O'Hara, Comp.
824.

Of the Commission.

tificate under the first; for till then, he is incapable of trading or contracting for his own benefit. All the property he acquires belongs to his creditors, and as he cannot trade for himself, he cannot be the object of a commission. Upon this principle it was determined that the assignees under a first commission might recover a lighter built by the bankrupt (being uncertificated) after a second commission sued out.

Brown v.
Chapman.
3 Bur. 1418.

Notwithstanding the *stat. 5. G. 2.* has provided a remedy against maliciously suing out commissions of bankrupt, yet it is held not to take away the common law remedy by an action for damages, but that the party may proceed at law to obtain such redress for the injury he has sustained as a jury think he is intitled to. Where a party elects to abide by the remedy afforded by the statute, he must petition the Lord Chancellor to have the bond assigned to him. It is however in the breast of the court where the bankruptcy is a doubtful case, and the commission superseded, either to direct an inquiry before a Master of the damages sustained by the bankrupt, or a *quantum damnificatus* upon an issue at law; and after the damages are settled, the court may, for the better recovery thereof, order the bond to be assigned. But where the case is attended with any flagrant circumstances, the bond would be immediately assigned without any further inquiry.

Ex parte Gayter.
3 Atk. 144.

The commission being sealed, three of the commissioners are to be summoned to attend for the purpose of opening the commission, when they proceed to receive proof of the petitioning creditor's debt.

10

If more than two of the commissioners should die, by which means there would not be a sufficient number to execute it, or if the commission should be lost, it must be renewed; upon which renewal only half the fees are paid, and the commissioners under the renewed commission proceed from that step which was left incomplete by the former.

and
if they were made payable jointly,
creditors or assignments for the same, in like
manner, bills, bonds, notes, or other securities,
coming bankrupt shall be admitted to prove their
payable at or before the time of such persons be-
or thing whatsoever, which shall not be due or
satisfied for any sum of money, or other matter
bankrupt, upon a good and valuable consideration
as aforesaid, to any person who shall become
every person who shall give credit on such account-
wards. For remedy whereof, be it enacted, that
table, which hath been a great discouragement to
before such time as such securities became pay-
any dividend or other benefit by the commission

Of the petitioning Creditors Debt.

THE 7 G. 3. c. 31. recites, "That whereas
 "merchants and other traders in goods have
 "been very often obliged, and more especially of
 "late years, to sell and dispose of their goods and
 "merchandise to such persons as have occasion for
 "the same, upon trust or credit, and to take bills,
 "bonds, promissory notes, or other persons secu-
 "rities for their monies payable at a future day,
 "and the buyers of such goods, becoming bank-
 "rupts, and commissions of bankruptcy being taken
 "out against them before the money upon such
 "bonds, notes, or other securities became payable,
 "it hath been a question, whether such persons,
 "giving such credit on such securities should be let
 "in to prove their debts, or be admitted to have
 "any dividend or other benefit by the commission
 "before such time as such securities became pay-
 "able, which hath been a great discouragement to
 "trade. For remedy whereof, be it enacted, that
 "every person who shall give credit on such securi-
 "ties as aforesaid, to any person who shall become
 "bankrupt, upon a good and valuable consideration
 "*bonâ fide*, for any sum of money, or other matter
 "or thing whatsoever, which shall not be due or
 "payable at or before the time of such persons be-
 "coming bankrupt, shall be admitted to prove their
 "respective bills, bonds, notes, or other securities,
 "promises or agreements for the same, in like
 "manner as if they were made payable presently,
 "and

Of the petitioning Creditor's Debt.

11

“and not at a future day, and shall have a proportionable part, share and dividend of such bankrupt's estate in proportion to the other creditors of such bankrupts, deducting only thereout a rebate of interest, and discounting such securities payable at future times, after the rate of 5 l. per cent. for what he shall so receive to be computed from the actual payment thereof to the time such debt, duty or sum of money would have become payable, in and by such securities. And bankrupts shall be discharged of such securities, and have the benefit of the statute concerning bankrupts, as if such sum of money had been due before the time of his becoming bankrupt.”

“But no such creditor shall petition or join in any petition for suing forth any commission of bankrupt till such debt become due.”

“5 G. 2. c. 30. s. 22. reciting the above statute, repeals so much of the act as disables such person from petitioning for or joining in any petition for a commission against any person who has before committed any act of bankruptcy, and enacts that it may be lawful for such person to petition for or join in petitioning for any such commission of bankruptcy.”

“5 G. 2. c. 30. s. 23. For preventing the taking out commissions of bankrupt maliciously, enacts, that no commission of bankrupt shall be awarded and issued out against any person, upon the petition of one or more creditors, unless the single debt of the creditor, or of two or more persons being partners, petitioning for the same,

“do

Of the petitioning Creditor's Debt.

"do amount to the sum of 100 l. or upwards, or
 "unless the debt of two creditors so petitioning
 "shall amount to 150 l. or upwards, or unless the
 "debt of three or more creditors shall amount to
 "200 l. or upwards."

Farrell 248.
 Ch. Ca. 191.
 Freeman 270.
 Ex parte
 Hillyard.
 1 Atk. 247.
 2 Ves. 407.
 Medlicot's case,
 2 Stra. 399.
 2 P. W. 783.

The acts of parliament relating to bankrupts being made for the relief of creditors, none but a creditor could at any time have taken out a commission; and now he must have a *legal* demand to the amount specified in the 5 G. 2. c. 30. s. 23. But a debt in equity will in no circumstances be a foundation for a commission; therefore if a legal demand is not in its own nature assignable, the assignee, notwithstanding his equitable claim, cannot be a petitioning creditor.

It is generally understood, that the commission must issue on the petition of some creditor capable of claiming relief under it; and therefore, that if the debt of the petitioning creditor appears to have been contracted subsequent to a secret act of bankruptcy committed by the trader, no commission ought to be granted upon his petition. Accordingly, where it appeared that a man was a bankrupt in *January* 1724, and the debt of the petitioning creditor was a note dated in *September* 1725, it was held to be a void commission. But if a debt originally upon a simple contract was extinguished by the creditors accepting a bond after a secret act of bankruptcy, it shall not operate as an extinguishment of the simple contract, so as to deprive the creditor of his right to petition.

Tomb v. Mytton.
 2 Stra. 744.

Ambrose v.
 Clendon,
 2 Stra. 1042.

This necessity of the petitioning creditor having a legal debt due before any act of bankruptcy, seems also to be tacitly admitted by the reasoning of the Judges in several cases, where a question has arisen, whether

Of the petitioning Creditors Debt

whether an indorsee of a note given before, but indorsed after a secret act of bankruptcy, is intitled to be a petitioning creditor. Such a creditor is allowed to petition, because he stands in the place of the indorser, and the debt is not created by the indorsement, but by the making of the note which was before the bankruptcy. The authority of these cases, and the reasoning on them, has been acknowledged and confirmed by the court of King's Bench, in *Bingley v. Maddison*, where a note was given by the bankrupt in *January*, which became due in *June*. The act of bankruptcy was in *October* following, and the indorsement in *November*. The indorsee of the note was petitioning creditor, and sued out the commission.

It was contended, that at the time of the bankruptcy the petitioning creditor had no debt, and therefore the commission could not be supported.

The court observed, that this was a case in which the law of *England* allowed the assignment of a *chose* in action. The debt payable to *B.* is assigned to *D.* The consequence is, that the assignment relates to the original debt, and the assignee stands in his place. That the indorsee always came in under the commission, because the indorsement relates to the original debt. That it stood thus upon principle, and the cases are clear, explicit, and positive, and of the highest nature. The case in the Common Pleas is a solemn opinion of the whole court. They therefore held the commission valid.

But I cannot presume to assert as a general principle, that the petitioning creditor's debt must be contracted

Ex parte
Thomas
1 Atk. 73.
2 Wilson, 135.

Bingley v.
Maddison.
B. R. Mich.
Term 1783.

2 Wilson 135.

Of the petitioning Creditor's Debt.

Green 80.

De Gelle v.
Ward,
Forrest, 243.

ed before any act of bankruptcy, without laying before the reader the substance of a case which has been thought by some to overturn this doctrine, and to make the time of the petitioner's debt of no importance, provided in fact he was a creditor to the amount required by the statute. In the case to which I allude, the defendant became indebted to the plaintiff in 1730, and afterwards committed an act of bankruptcy, upon which the plaintiff petitioned for, and took out a commission against him.

In order to make void as many of his conveyances as possible, the creditors, on a bill filed, endeavoured to prove him a bankrupt as far backward as they could, and did actually prove, to the satisfaction of the court, that he committed an act of bankruptcy in the year 1726, which gave rise to a question, whether the commission of bankruptcy, and all that was done under it, was not wrong?

Lord Talbot, after taking time to consider, declared, that it was clear nobody but a creditor could take out a commission of bankruptcy against another; and that such commission must issue on the petition of some creditor, who could be relieved under it. But if the debt is subsequent to the act of bankruptcy, the creditor cannot come in under the commission, against the effects of the bankrupt, though the person of the bankrupt will himself be liable. Therefore his Lordship thinking the commission ill founded, dismissed the plaintiff's bill.

4 Brown's Parl.
Ca. 327.

Upon an appeal from this decree to the House of Lords, a question was put to the Judges, whether the commission of bankruptcy issued on the 20th November

number 1730, against *John Ward*, on the petition of *George Sureties*, was good and valid in law? In answer to which the Judges delivered their unanimous opinion in the affirmative.

Upon which the decree of dismissal was reversed, and the Court of Chancery ordered to proceed to hear the cause upon the merits.

The reasons of the Judges opinion never being entered on the Journals of the House of Lords, I have not been able to learn upon what grounds the learned Judges held this commission to have been legally issued. It is probable they formed their opinion from some particular circumstance which does not appear in the report. The question put to the Judges was not an abstract question, whether, to validate a commission, it ought to issue on the petition of a creditor, who became such prior to any secret act of bankruptcy, but whether *the commission* issued against *John Ward* was good and valid? Their opinion therefore upon that question might be guided by some particular circumstances in the case. And there is the more reason to suppose such a conjecture probable, because one of the Judges, when he afterwards declared his opinion upon a question, whether an indorsee of a note to whom the same had been indorsed, after an act of bankruptcy, could be a petitioning creditor, gave as the reason why he could be so, that the debt was due from the bankrupt to the indorser *before he committed an act of bankruptcy*, which seems strongly to imply his opinion, that if the note had been given after a secret act of bankruptcy, it would

Ex parte
Thomas,
1 Atk. 73.
2 Wilson 135;

Of the petitioning Creditor's Debt.

would not have been a debt whereon to found a commission.

Ex parte Thomas,
2 Atk. 73.
Sweyne v. Wallinger,
2 Stra. 746.
contra *Mosely,*
37.

Quantoek v. England,
2 Black. 703.

And Lord *Hardwick*, who was Chancellor at the time of the appeal in *De Gells v. Ward*, in a similar case, decided in the same manner as the court of Common Pleas, because the note itself was given before an act of bankruptcy, though indorsed after.

A debt at law, notwithstanding the statute of limitations has incurred, will support a commission; for the statute does not extinguish the debt, but the remedy, and the least hint will revive it.

Indeed if the debtor himself applies on that ground to supersede the commission, the case may be different; but a debtor of the bankrupt's cannot avail himself of that defence to elude the payment of a just debt to the assignees.

Ex parte Lee,
2 P. W. 783.

It has been determined, that a creditor, by notes bought in at 10s. in the pound, was a creditor for the full sum, and might take out a commission.

Flower v. Herbert,
2 Vef. 327.

A debt on account, though not liquidated, is a foundation for a commission of bankruptcy.

Palm. 325.

If a tradesman becomes security for another, it creates such a debt that the creditor may take out a commission; so a solicitor's bill for fees will support a commission, and notwithstanding an order obtained that the bill should be taxed by a Master and all proceedings at law in the mean time staid; if the solicitor whilst the bill is under taxation, sues out a commission of bankrupt against his client, it has in one case been determined to be no contempt nor a sufficient cause to supersede the commission, because
the

Mosely 27.

Of the petitioning Creditors Bill

the order of reference extends only to the balancing actions and the common and ordinary proceedings.

The executor of a bankrupt, unless the commission against his testator has been superseded, cannot take out a commission for a debt due to the testator, because the debt vested in his assignees, and consequently the executor is not intitled to be the petitioning creditor. A debt due from a partnership is a legal debt to support a *separate* commission. So a sum awarded by arbitrators will support a commission notwithstanding a bill filed to set aside the award; for the arbitration bond is a debt at law, and binds the parties, until it is set aside for corruption or partiality, &c. And if a bill filed was a foundation to supersede the bond, a person by filing a bill might at once frustrate the effect of the award.

A creditor, before the party entered into trade, may on account of such debt sue out a commission, but a creditor for a debt contracted after leaving off trade, cannot. But when a commission is sued out, those creditors who have become such since the quitting trade, may come in and share the dividend with those who were creditors before or during the trading, provided they are not barred by a prior act of bankruptcy.

A creditor by bond payable at a future day having sued out a commission of bankruptcy before the time of payment, Lord Chancellor *Parker* ordered it to be superseded because the money was not then due, but this, though good law at the time of the decision, has since been altered by the 7th G. 1. c. 31. and 5 G. 2. c. 30. which extend to all sorts of bonds and securities given on good consideration for the

payment

Ex parte
Osburn
1 Atk. 100
220. 222

Ex parte Crisp
1 Atk. 134.

Ex parte
Lingood.
1 Atk. 241

12 Mod. 159.
Lord Raym. 2874
1 Sid. 411.
Butcher v.
Bast.
Doug. 282.

Ex parte James
19th June,
1719.

Swaine v.
Demattos.
2 Stra. 1212.

Of the petitioning Creditor's Debt.

Chilton v. Whiffen.
3 Wils. 17.
Goddard v. Foster.
2 Wils. 271.
Barnaby's case.
1 Str. 653.

payment of money, notwithstanding the preamble speaks only of bonds given for goods in trade.

If a creditor has his debtor in execution, he cannot petition for a commission of bankruptcy; for the body of the debtor being in execution, is a satisfaction of the debt in point of law. Therefore, where a commission had issued on the petition of a creditor who had the bankrupt in execution, it was upon that account superseded.

Ex parte Lewis.
1 Ark 154.

Nor has the petitioning creditor the ordinary election to sue the bankrupt at law, or come under the commission; for if he was to elect to proceed at law, the commission must be superseded, which would affect those creditors who had proved debts under it.

A creditor, before the bankruptcy, may sue the bankrupt at law, or come under the commission; but when a commission is issued, the creditor cannot sue at law, for the commission is a bar to the action.

A creditor, who has proved his debt under the commission, may come in and share the dividend with those who were creditors before or during the trading, provided they are not barred by a prior act of bankruptcy.

A creditor, who has proved his debt under the commission, may come in and share the dividend with those who were creditors before or during the trading, provided they are not barred by a prior act of bankruptcy. A creditor, who has proved his debt under the commission, may come in and share the dividend with those who were creditors before or during the trading, provided they are not barred by a prior act of bankruptcy.

C H A P. III.

Of the Trade, Occupation, or Profession
which a Man must pursue, before he
can be adjudged a Bankrupt.

THE first statute made concerning bankrupts;
was 34 H. 8. c. 34. this has been considerably
altered by 13 Eliz. c. 7. which enacts "That any
"merchant or other person being subject or denizen,
"using or exercising the trade of merchandize by
"way of bargaining, exchange, rechange, bartry,
"chevifance or otherwise, in gross or by retail, or
"seeking his or her trade of living, by buying and
"selling, that departs the realm, &c. shall be deem-
"ed a bankrupt."

21 J. 1. c. 19. f. 2. enacts "That every person
"that uses the trade of merchandize, by way of
"bargaining, exchange, bartering, chevifance or
"otherwise, in gross or by retail; or seeking his or
"her living, by buying and selling, or that should
"use the trade or profession of a scrivener receiving
"other mens monies or estates into his trust and
"custody, shall be liable to be a bankrupt. And
"it is provided, That this act and all other acts
"heretofore made against bankrupts, should extend
"to strangers born, as well aliens as denizens, as
"effectually as to natural born subjects, both to
"make them subject to the laws as bankrupts, as
"also to make them capable of the benefit, or con-
"tribution as creditors, by these laws."

By

Of the Trade, Occupation, &c.

By the 13 and 14 C. 2. c. 24. "It is enacted, that
 "whereas divers noblemen and gentlemen, and
 "persons of quality no ways bred up to trade,
 "do often put great stocks of money into the
 "*East-India* and *Guinea* Company; no persons
 "adventurers for putting in money or merchan-
 "dize into the said companies, or for adventuring
 "or managing the *Fishing Trade*, called the
 "Royal *Fishing Trade*, should be reputed or taken
 "to be a merchant or trader, within any statutes for
 "bankrupts; Provided, that persons trading in any
 "other way or manner should be liable to a com-
 "mission, as fully and not otherwise, as if the act
 "had not been made."

By 9 & 10. W. 3. c. 44. "No member of the
 "*East-India* Company, in respect of his stock
 "therein only, shall be a bankrupt."

The 10 of Ann. c. 15, reciting, "That it is
 "found by experience, that many and great mischiefs
 "have happened to trade and credit in general, by
 "reason of the descriptions of a bankrupt in 21 J.
 "1. c. 19. enacts that the said act, and also all and
 "every other act and acts of parliament whatsoever,
 "so far forth as they relate to the said descriptions
 "of bankrupt, be repealed and made void; and that no
 "person or persons whatsoever within the said de-
 "scriptions, or any of them, shall, for or by reason of
 "the same, be taken or adjudged to be within any
 "statute or statutes of bankrupt whatsoever."

By the 5 G. 2. c. 30. reciting "That whereas
 "persons dealing as bankers, brokers and factors,
 "are frequently intrusted with great sums of mo-
 "ney, and with goods and effects of very great
 "value"

"value belonging to other persons; it is provided
"that such bankers, brokers, and factors should be
"subject and liable to that and all other the statutes
"made concerning bankrupts."

And by a subsequent clause, it is enacted, "That
"no farmer, grazier, or drover of cattle, or any
"person or persons who is or are, or shall be Re-
"ceiver General of the taxes granted by act of par-
"liament, shall be intitled as such to any of the
"benefits given by this act; or be deemed a bankrupt
"within the same, or withip any of the statutes
"now in force concerning bankrupts."

Every person being a trader, and capable of mak-
ing binding contracts, is liable to become a bank-
rupt; as a nobleman, member of the house of com-
mons, clergyman, &c. But against persons having
privilege of parliament, there may be some par-
ticular powers that commissioners of bankrupt
cannot exercise. When, therefore it is laid
down in the books, that farmers, inn-keepers, &c.
cannot be bankrupts, it must be understood in re-
spect to that particular description, and not as
affording a protection, if in any other shape they
come within the bankrupt laws. Thus, a farmer
as such, cannot be made a bankrupt; but if he is
also a dealer in wool he may. So if a man be a pub-
lic officer, as an Exciseman, he is not in that capacity
an object of the bankrupt laws; yet if he trades he makes
himself subject to them. But infants and married
women cannot be bankrupts. As to the latter how-
ever, there are exceptions; for a *feme covert* in London,
being a sole trader according to the custom, is liable

Ex parte
Meymot
1 Ark. 200.
Hankey v. Jones
Cowp. 745.

Newton v. Trigg
3 Mod. 330.
Mayo v. Archel
1 Stra. 514.
Highmore v.
Mellor.
1 Atk. 206.
Ex parte
Sydebotham.
1 Atk. 146.
Bull. N. P. 38.
Rex v. Cole.
Ld. Ray. 443.
Ex parte
Carrington.
1 Ark. 206.

Lavie v. Phillips
3 Burr. 1783.
1 Black. Rep.
579.

to a commission of bankrupt, and her separate effects in trade may be seized and applied to the payment of her own debts contracted in such separate trade.

There is also another exception of a more doubtful nature, where a *feme covert* lives apart from her husband, acting as a *feme sole*, he not being liable to her debts.

If a woman under these circumstances, not being the wife or daughter of a freeman of London, enters into trade, and contract debts; it should seem that she is liable to a commission of bankruptcy. The statutes contain no exception, either of an infant or *feme covert*; their incapacity to be made bankrupt, arises from the operation of law that declares them incapable of making binding contracts; but the case to which we now allude, is an exception to that rule. The criterion therefore, of a *feme covert* being capable of falling under the bankrupt laws, appears to be, her liability to be sued to execution for the debts she has contracted. A commission of bankruptcy is considered as a statute execution. If a married woman, is so circumstanced, as to be subject to a common law execution, there does not occur any reason why she should not likewise be subject to this statute execution. And upon this principle it is presumed Lord Chancellor *Assley* relied, in the case of Mrs. *Fitzgerald* in 1772. where it appeared, that *Richard Fitzgerald*, husband, of *Anna Fitzgerald*, having for some years carried on the business of a linendraper, in *St. Giles in the Fields*, in the county of *Middlesex*, on the 14th March 1768, agreed upon a separation, when articles were accordingly entered into for that purpose, and

Ex parte Preston
Green. B.

and executed by and between them. And *Thomas Hepton* and *Thomas Kirkman* appointed her trustees. Whereby the said *Fitzgerald*, in order to make provision for his wife and children, and in consideration of 600*l.* then by him taken to his own use, out of his estate and effects, assigned unto the said trustees all his stock in trade, household goods, and all sums of money due to him, and then outstanding on his books, together with the said books, and the lease of his house, upon trust for the said *Anne*, as her own separate estate, to be disposed of as she should think fit, and to be by no means subject to the debts, controul, or intermeddling of her said husband. And it was thereby further agreed, that the said *Anne* should have the liberty of trading without any interruption from her husband, she paying all the debts then owing by him in trade, and maintaining their children at her own expence, and saving him harmless from the same, and from all contracts and agreements to be thereafter entered into by her, either in the way of trade or otherwise.

The separation took place, and the husband received the 600*l.* to his own use; and they ever after lived separate and apart from each other, and he went to the *East-Indies*. The said *Anne* was left in possession of effects to the amount of 900*l.* to be employed, and which were employed by her, in the said trade. And by buying and selling goods in the said trade, she got her living and maintenance for herself and children, continuing in her husband's house, and there carrying on the business of a linendraper, on her own account, and in her own name as a sole trader, near four years.

In December 1771, a commission of bankrupt was taken out against her, when the commissioners refused to find her a bankrupt, because she was a *feme covert*, residing in the county of *Middlesex*, and not a *feme sole* merchant, trading in the city of *London*; but upon petition to the Lord Chancellor *Apsley*, on the 29th of *January*, 1772, (counsel being heard on both sides) his Lordship ordered the commissioners forthwith to proceed to declare Mrs. *Fitzgerald* a bankrupt, and the messenger to take possession of her effects. And accordingly, on the 3d of *February* following, she was declared a bankrupt by the commissioners.

And the authority of this case appears to be confirmed by the two following, in which it was decided that a *feme covert* having a separate maintenance, and living apart from her husband may be sued at law to execution.

An action was brought by the plaintiff against the defendant for goods sold by him to her. The defendant pleaded, that at the time of the promise she was *covert baron* of Lord *Laneborough*, a peer of *Ireland*, who is since dead.

To this plea the plaintiff replied, that the defendant lived separate from her husband, they being parted before the promise made, and that she, by a deed of separation, had a large separate allowance, which was duly paid. And that the defendant lived in *England* and her husband in *Ireland*. To this replication there was a demurrer.

Lord *Mansfield*, in delivering the judgment of the court, stated the pleadings particularly, and observed that

Ringshead v.
Laneborough,
Hil. 23, G. 3.
B. R.

that he had done so, because the opinion he should give would be founded on all the circumstances of the case taken together, and would only be an authority in a case circumstanced exactly similar to the present. He said, by the general rule of the common law, a wife having no civil capacity or power of acting but with her husband, under whose power she is supposed to be; she can have no property, the *usufruct* of all her real estates belongs to the husband during the coverture. Therefore she cannot be sole plaintiff or defendant in any suit—therefore she cannot bind herself by any contract—therefore her husband is bound to support her.

Her promise has no express power to bind herself or her husband.

General rules, observed his Lordship, are adapted for the times in which they are made, but process of time begets cases not within the spirit, though within the letter of the rule; and therefore exceptions are from time to time admitted, as reason, convenience and the public good require, and the general rule, together with the exceptions, form the law. This rule has had many exceptions. Modern times have found out the mode of inventing separate estates for the wife, by the intervention of trustees, which prevents the husband's being sued.

Cases formerly arose, where the husband had abjured the realm, was exiled, or professed; and there the wife was allowed to act as a *feme sole*. My Lord Coke calls it a civil death. But it is not a civil death. It resembles it, so far as to enable the wife to sue or be sued, and to acquire property.

In the reign of King William, the case of the dutchess

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dutchess of *Mazarine* happened. An idea has prevailed, that that case, was decided upon the discretion of the court to grant a new trial. It is surprising that reason was not given in any of the reports. Lord *Raym.* 147. says, "the opinion of Holt Chief Justice was, that when the husband is an alien enemy, and under an absolute disability to come and live here, the law perhaps will make the wife of such a husband chargeable as a *feme sole* for her debts and contracts. For this case does not differ from the case of my Lady *Weyland*, and my Lady *Belknap*, who were allowed able to sue and to be sued upon the abjuration or banishment of their husbands, as if they had been *sole*." So the verdict stood, and the verdict found that she might bind herself.

In the case of *Sparrow v. Carruthers*, Mr. Justice *Yates*, thought the transportation such an absence of the husband within the reason of the cases of abjuration, &c. that the wife might be sued alone; though certainly it was not within the letter, for it was transportation only for seven years.

Absolute necessity requires exceptions to be made from a general rule, when cases happen which did not exist according to the manners of the times, when the rule was made.

Consider whether the defendant can be allowed to avail herself of the plea of coverture, under all the circumstances of this case.

The wife lives separate from her husband, has a separate maintenance, he being in *Ireland*, she in *England*.

She

She acts as a *feme sole*, and it is a fraud in her, to attempt to avoid her contracts, by this defence.

This agreement, though between husband and wife, bound each of them as effectually, as if they were single. *Rex v. Mead.* 1 *Burr.* 542. The wife under this agreement has a property of her own, she is under no power even of her husband, the reason of her incapacity ceases. The creditor cannot sue the husband. When she contracted, she did it as a single woman. After having got credit as a *feme sole*, she never shall be permitted to say, that she was married; and more particularly, when the consequence is not to make another person liable, but to prevent the creditor recovering his debt at all.

There is no case precisely in point, and therefore the court must make a new precedent, from reason, conveniency, and analogy to the authorities.

There have been two cases cited in the Common Pleas. In the case of *Hatchet v. Baddely*, the circumstances of the case make no question at all.

In the case of *Lean v. Shutz*, the court differed on the merits, though it seems from the report, that three of the Judges were of opinion the action would not lie. But it was determined upon the husband's not being made a party; in the necessity of which all the Judges agreed.

In this case, the husband was dead before the action brought; therefore the same objection does not occur. But if he was now living in *Ireland*, he was free to say, he thought he need not be joined. It is not analogous to the custom of *London*. It is analogous to the case of a man exiled, but much stronger. The exile does not dissolve the marriage; the wife ought

ought in duty to go and live with her husband. She cannot marry another man; the exile is no corruption of blood.

In those cases that have been allowed as exceptions to the general rule, the wife sued or was sued as a single woman. So here she is sued as single: she pleads coverture. The replication states all the facts, which are sufficient to subject her to be treated as a single woman.

Under all the circumstances of this case, the defendant ought not to be permitted, most iniquitously, to avail herself of the plea of coverture to commit a fraud. And therefore there must be judgment for the plaintiff.

It is true that in *Lady Lansborough's* case, the absence of the husband was a principal argument to prove that he need not be joined in the action, but where he is not himself liable to his wife's debts, his presence will make no variation. Therefore in *Barwell v. Brooks*, which was an action brought for goods sold and delivered to the defendant, she pleaded coverture; to which it was replied, that the defendant lived separate and apart from her husband, that she had a competent separate maintenance regularly paid, and that the goods mentioned in the declaration, were furnished for her separate use and support. Demurrer to the replication. Lord Mansfield delivered the opinion of the court. The question is whether a married woman can be sued for a debt on her own contract. To be sure the general principle of law is, that she cannot. But as the times change, you must alter the law to it; and therefore, gradually, exceptions have been allowed to prevent injustice.

The

Barwell v.
Brooks. Hil.
24. G. 3. B. R.

The fashion of modern times is, that a woman married may be in a situation as a *feme sole*; then courts of law are to adapt the exception to new cases as they arise. Lady *Laneborough's* was a new case, and a new exception. So was the transportation case. The law does not depend upon cases, but upon the principles which govern them. In this case it is admitted the husband is not liable, and therefore the plaintiff has no cause of action against him, and it is absurd to say he must be joined. As to the husband here being in *England*; to be sure stress was laid upon his being abroad in Lady *Laneborough's* case, but as he is not liable, I think it makes no difference. Mr. Justice *Buller* took notice of some of the arguments at the bar; and observed that in Lady *Laneborough's* case, the court coupled all the circumstances together, as they appeared on the record, but the principle of the judgment was, that the husband was not liable, which is the case here. It is absurd to say, that a person must be put upon the record, against whom there cannot be judgment. The rest of the court concurred in giving judgment for the plaintiff.

The above determinations principally turned upon the operation of a separate maintenance, but there have been two cases ruled at *Nisi Prius*, in which no such circumstance appeared; but the unavoidable absence of the husband made it necessary that the wife should be considered as a *feme sole*. In the case of *Sparrow v. Carruthers*, Yates Justice ruled at *Carlisle*, that where the husband is transported he need not be joined in the writ. And in another case at *Maidstone* before Lord *Mansfield*, where a woman had exercised the trade of a baker,

she

Sparrow v.
Carruthers
2 Black. Rep.
1197.
Cited in
Ringstead v.
Laneborough

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she being the wife of a man transported, his Lordship held that she was liable to be sued alone.

Every reason that induces the courts of law to make a *feme covert* personally liable for her contracts, equally operates to make her subject to bankruptcy; and it would be the height of cruelty to determine that a woman should be taken in execution for her debts, and at the same time, preclude her from that benefit, which the legislature affords to honest and industrious traders, sinking under the pressure of undeserved misfortune.

Any merchant or other person using the trade of merchandize by way of bargaining, exchange, rechange, bartry, chevifance, or otherwise, in gross or retail, or seeking his trade of living by buying and selling, may be bankrupt. Also bankers, brokers, factors, dealers in coals, scriveners, vintners, brick-makers, butchers, bakers, brewers, clothiers, goldsmiths, dyers, iron manufacturers who buy rod or bar iron and cause it to be worked up into wares, locksmiths, milliners, nailors, plumbers, salesmen, shoemakers, smiths, and tanners. To enumerate every trade which is sufficient to make a man a bankrupt, would be too tedious, I shall therefore consider the principles that have weighed in adjudications, premising, that a chapman, or one that buys and sells any thing, though his dealing does not come under the denomination of any particular trade, may yet become a bankrupt.

In the interpretation of the bankrupt statutes, it hath been held, that the buying and selling there meant, is of persons, who attempt to gain a livelihood by a credit, gained on an uncertain capital stock.

- 2. Wils. 170.
- 1. Com. Dig. 521.
- 3. Wils. 172.
- 4. Burr. 2148.
- 3. Mod. 330.
- Cro. Ja. 585.
- 2. L. Ray. 1480.
- Stone. 120.
- Bea. Sex. Mer. 488.
- Goodinge. 12.
- Hutt. 46.
- Cro. Car. 31.
- 2. Black. Com. 476.
- 3. Mod. 330.
- 1. Roll. Abr. 60. pl. 11.

- 2. Wils. 171.
- 2. Black. Com. 476.

stock. But no handicraft occupation (where nothing is bought or sold, and therefore an extensive credit for the stock in trade is not necessary to be had) will make a man a regular bankrupt. But when persons buy goods, and make them up into saleable commodities; as shoemakers, smiths, and the like; here, though part of the gain is by bodily labour, and not by buying and selling, yet they are within the statutes of bankrupts; for the labour is only in melioration of the commodity, and rendering it more fit for sale.

A farmer who deals in potatoes, may on account of such dealing be declared a bankrupt, but that will depend upon his buying and selling sufficient to make it his trade. So if a *Herefordshire* man should buy apples to mix with his own, and then sell the cyder, he would be a trader. Therefore one *Richard Baxter*, who for divers years before any commission of bankruptcy taken out against him, occupied a farm of 300 *l. per ann.* and during such occupation, annually planted divers acres of the farm with potatoes, and likewise bought of other persons great quantities of potatoes with intention to sell them for gain, which he publicly did, in several markets, and hired warehouses to put them in, till he could conveniently sell them, was held to be a trader within the statutes of bankrupts.

An innkeeper is not a trader within the bankrupt statutes, for he deals under a restraint and particular limitation; he cannot refuse to lodge travellers, and he is under the power of the justices of the peace in the place where his inn is situated; he does not deal upon contract as other traders do, for a Judge
of

Mayo v. Archer
1. Stra. 513.

Newton v. Trigg
3. Mod. 329.

of Affize may set a price upon his goods, and if they should set a price themselves, if it is unreasonable they may be indicted for extortion. What they buy is to a particular intent, for it is to spend in their houses, and though they get their living by it, it is not *ad plurimum*; for the greatest part of their gains ariseth by lodgings, attendance, dressing of meats, and other necessities for their guests.

In all trades where the party purchases the commodity for the purpose of manufacturing, and thereby making it more valuable, he may be a bankrupt, as a shoemaker, tanner and baker. So a butcher has been held a trader within the statutes; and this, though the court expressed themselves very sensible of the inconvenience of extending the bankrupt laws to artificers whose living is substantially gotten by mechanical labour, with a mixture of buying and selling. It has been questioned whether a carpenter could be a bankrupt, but from a decision of Lord *Holt's* that a ship-carpenter might be a bankrupt, and from the reasoning of other cases, it should seem the true distinction is between a mere working carpenter, and one who buys timber and materials for carrying on his trade.

A person who has dealt merely in running and smuggling goods, though it is an offence, and contrary to an act of parliament; yet still it is a trading within the meaning of the bankrupt statutes, and such trader is liable to a commission.

Lord *Hardwicke* was inclined to think a pawnbroker within the several statutes concerning bankrupts, and especially within the general words of the 39th clause of the 9. *Geo.* 2. the words of which

are

Dally v. Smith.
4. Burr. 2148.

Chapman v.
Lamphire.
3. Mod. 155.
Kirney v. Smith.
L. Raym. 741.

Ex parte.
Maymot
1. Atk. 200.

Highmore v.
Molloy.
1. Atk. 206.

are "Whereas persons dealing as bankers, brokers, and factors, are frequently intrusted with great sums of money, and with goods and effects of very great value, belonging to other persons. It is hereby further enacted that such bankers, brokers, and factors shall be, and hereby are declared to be, subject and liable to this and other the statutes made concerning bankrupts."

For he said, though pawn-brokers are not expressly named, yet the general word *broker* is the genus, and all other kind of brokerage the species.

The clause in 5 Geo. 2. relating to dealers, as bankers, took its rise from that part of the 21.

Ex parte Wilson.
1 Atk. 218.

Jac. 1. relating to scriveners, who were more numerous than in latter days; for bankers have taken upon them to act as scriveners, and therefore made it necessary for the legislature to add bankers; and a person acting as a banker will be considered as such, although he does not keep an open shop.

The being an agent to regiments will not make a man a bankrupt, nor exempt him from being one.

1 Atk. 218.

A clergyman, if he trades, may become a bankrupt. The statute of the 21. H. 8. is rather in the nature of a prohibition, and a prohibition will not exempt him from being a bankrupt; for if a man with his eyes open will break the law, that does not make void the contract. It is undoubtedly very improper for a person to say, I have broke the law, and therefore I am exempt from any remedy a creditor may have against me; and a man cannot take advantage of the breach of one law, in order to avoid his being subject to another.

This doctrine is confirmed by the counsel in the case of *Hankey v. Jones* abandoning a similar ob-

Hankey v. Jones.
Cowp. 745.

D jection,

jection, that the defendant was a clergyman in priest's orders; and that the clergy being prohibited, by law, from using any manner of merchandize, the defendant could not legally be said to be an object of the bankrupt laws.

Newton v.
Newton
Trin. Va. Sitt.
at Guild. 1757.

The making of allum is not a trade within the bankrupt statutes; therefore in a case at *Nisi Prius* before Lord *Mansfield*, (with a note of which I have been favoured by a gentleman, who also furnished me with the argument in *Parker v. Wells*, stated in a subsequent part of this work,) where it appeared the supposed bankrupt was lessee of some allum works, let to him by the executors of the dutchess of *Buckingham*, under an agreement to make it at a certain rate *per ton*. Evidence was given as to the manner of enjoying such works; that the rude mass is the rock, it is dug, burned, steeped and boiled in lead, and then mixed with kelp lees and urine. There was no evidence that any owner of allum ever took advantage of his rocks in any other manner. No proof that it was ever sold as dug out of the rocks. The dutchess of *Buckingham* wrought it in the same manner. No proof of any working contrary, or that it can be advantageously used otherwise.

Lord *Mansfield* said, if a man mixes an ingredient out of his own soil with others, this trifling ingredient shall not make him a bankrupt. The allum is not an ingredient of the kelp and urine, but they are as necessary to make it allum as threshing corn or malleating iron. Then, is there any authority that a man who makes the best of his produce in coming to market, by one, two or three processes, shall be deemed a trader? It must be a general buying and selling, not a special one, for a particular purpose.

So

So, if a man buys a greater quantity of potatoes than necessary. But here, it is all his own allum, and he is not a trader, for barely carrying the produce to market in some way manufactured. There is no case found similar to this. The lead and iron mines go through several processes, smelted and cast into bar. Chalk, marl, lime, each goes through a process before it is fit for use. Cyder made from a man's own apples, corn made into flour. As to malt, I don't know whether there has been any resolution; hemp, flax, wood particularly goes through many manufactures. The executors of the dutcheſs have all made these contracts, are they all liable? If not liable as working it himself, he cannot be liable as contracting with another to work it at so much; nor can the workman who only works it for the benefit of the landlord. And I should not be for extending these acts of bankruptcy. Accordingly, a verdict was found for the defendant.

Lord Chief Justice *Pratt*, in the case of *Port v. Turton* said, a brick-maker might be a bankrupt, because the earth is manufactured and turned into quite another thing.

Port v. Turton,
2. Wils. 172.

Other cases have since arisen, wherein the question whether the making bricks will bring a man within the bankrupt statutes has been agitated; and as the case of *Parker* and *Wells* is now depending in the Court of King's Bench, by writ of error from the Common Pleas, in which the law upon this point will probably be settled, I shall content myself with laying before the reader the substance of the case *Ex parte Harrison*, and Lord *Loughborough's* opinion in

Ex parte
Harrison
Brown, 173.

Parker v. Wells without attempting to form any general conclusions from those decisions.

Upon a petition for a new trial, an issue having been directed to try the question, whether the petitioner was or was not a bankrupt; it appeared from the report to have been proved that the petitioner who was a farmer renting a farm upwards of 100*l.* a year made bricks of earth taken of the waste without any licence from the lord (to whom he afterwards paid a consideration,) that he used a kiln for the purpose, not built by himself, and had, at various times, made from 40,000 to 70,000 bricks every year, and sold different quantities, sometimes only to certain persons, and sometimes generally to all who came for them. It was further in evidence that the kiln was a small one, not fit for making more than 7000 bricks at a time. One of the witnesses swore he was employed by the plaintiff to make bricks at a certain price, and that he sold them at an advanced value.

The 26th May, 1781. a commission was taken out and he was found a bankrupt. Upon a petition to supersede the commission, an issue was directed and tried at the Assizes at *Derby*, when the counsel of the plaintiff at law cited 2. *Wils.* 169. which case was not denied to be law by the counsel for the defendant, but they insisted that the bankrupt was only a farmer, and did not make bricks for sale, but for his own use only.

Mr. Justice *Buller*, who tried the cause, told the jury the question was, whether the bankrupt kept a public sale kiln; if he did, it was a trading within the

the bankrupt laws; but if it was a mere private kiln for his own use, and that having too many, he only sold to a neighbour; that would not be such a trading as would make him a bankrupt.

The jury found that it was a public sale kiln, and consequently gave a verdict for the plaintiffs. The defendant petitioned for a new trial. The counsel for the plaintiffs cited *Watkins v. Cordell*, on the trade of an iron master, where Lord *Mansfield* said, that the owner of land merely preparing the produce for market, is not a trader, as in the case of an allum work; but where the foundation of the estate was made the basis of a manufacture, as in the case of a brick-maker, that would make a man a trader. They also cited *Priest v. Pidgeon*, where a victualler sold out of his house by retail, two gallons of brandy and five dozen of wine; the jury found him a bankrupt and the court refused a new trial, saying this was a proper subject for the jury to determine. And *Willet* and another, assignees of *Aaron* a bankrupt against *Edmonds*. *Aaron*, an innkeeper in *Cambridge*, used to sell liquor by dozens out in the neighbourhood to the distance of three miles. Lord *Mansfield* thought it a matter to leave to the jury whether he was or was not a bankrupt.

Lord Chancellor, The only question, is whether a man making bricks on his own estate, or on that which he rents, shall not be a trader liable to the statutes of bankruptcy, though he shall expose the bricks to sale. It seems here as if he bought the soil, which founds two questions, first, whether the converting the soil into bricks for sale would make him liable; secondly, if the buying the soil and making it into bricks will make him so.

*Watkins v.
Cordell.*
B. R.
19. G. 3.

Priest v. Pidgeon
B. R.
12. G. 3. 1772.

*Willet v.
Edmonds.*
13. G. 3. 1773.

Of the Trade, Occupation, &c.

If I take the case right the Judge reported this fact. That after two persons had used the kiln, the bankrupt took it up and continued it with *Beet*, who was at half the expence of the kiln, and who was to be at the expence of getting the clay, the fire, &c. and to be allowed so much *per* thousand for the bricks, which were to be the property of the bankrupt. That the clay was dug for the bankrupt and under his authority, which made it the same as if he had the lord's licence to take the materials he found necessary for making the bricks. That the bankrupt engaged the other in making the bricks, and in taking the materials out of the waste.

I lay out of the case all that has been said of farmers, innkeepers, &c. exercising other trades; either they must be only consequential, or they must be beyond the measure of their own trade—I therefore think the case of the vintner who sold five dozen of wine hard measure. If a vintner will sell as a wine merchant, the quantity is not material—It is a separate article by which he seeks his living. If a great farmer would keep a chandler's shop, it would be in vain for him to say he was a farmer; the manner, more than the quantity points that it is seeking his living. The principle of the old cases is that the parties do not buy and sell, for though they buy, they do not sell in the same form. The effect of the distinction was found to be too large, as it would apply to a great many trades; as for instance, a distiller. The principle therefore received another application; and now if a man buys raw materials and varies the form ever so much it will be a trading. Clay and sand turned into bricks would therefore

therefore be within the statute. But there is another ground upon which it is more uncertain, where he vends the produce of his own estate, because that is not a buying, and therefore the cases have gone upon this, that the man merely selling the produce of his own land, he shall not be liable to be a bankrupt. It is not stated to have been decided that a great brick-maker making from his own estate can in that respect be a bankrupt. The case of *Watkins v. Cordel* is only a saying, as there the bankrupt bought iron. The case of the iron master would be like that of the sugar baker, who had the plantation. I should think if it was brought to a neat question, and the jury thought he only meant to bring his own produce to perfection, they would be right not to find him a bankrupt; but it would be very difficult to bring that idea before a jury, and the question would be, whether the man meant to carry on a trade, or merely to meliorate the produce of his own estate. It is very different where a man sets up to sell bricks, and goes about the country to collect materials, the collecting the materials will be held ancillary to the general purpose. Purchasing the earth by obtaining a licence to dig in the waste, might, and I think it would be held to be for the purpose of carrying on the trade. Here the earth was not purchased, but taken by way of trespass, which would amount to obtaining a licence, and that brings it within the bankrupt laws, that it was not to improve his own estate, but a purchasing of the earth by licence ancillary to carry-

ing on the trade of a brick-maker. The petition for a new trial was dismissed.

Parker v. Wells

In the case of *Parker v. Wells* the plaintiff made bricks for sale upon land which he held as parcel of an extensive farm demised for a term of twenty-one years. At the time of making the demise the brick ground was open, and the sand and fuel were bought by him, being necessary ingredients in converting the earth into brick. These seem to be all the facts that are material to the determination of the question of law. Upon these facts the question is, whether this is sufficient to constitute a trading within the intent and meaning of the bankrupt laws.

Lord Loughborough. I take the term *trading* to be essential to the description of a bankrupt, and that the bankrupt laws are framed only for the convenience of trade, and that no person who cannot be said to carry on trade is the subject of these laws, otherwise than by special provision. In all the statutes, the description of persons subject to the bankrupt laws is stated in terms somewhat diffuse, referring in every part of it to this idea, his being a trader using the trade of merchandize by bargaining, bartering, and so on. Particular words are used; it is not mere buying and selling, but it is a person who shall seek his trade of living by buying and selling. A scrivener, a banker, broker, or factor, by express provision are subject to these laws. It is not left for matter of construction; it might be doubtful to be sure, whether any of those persons who are specially made subject to the bankrupt laws could be considered in the light of traders seeking their trade or living by buying and

and selling. On the other hand, in a case where the courts have determined that a person by a certain concern in trade was subject to the bankrupt laws, the person not being in the general idea of the words a trader, the legislature interposed, not only to make a construction, but to annul the judgment as giving an unjust construction to the statutes. That was Sir *John Wolstonholme's* case in *Car. 2.* time. The manner in which the trade to the *East Indies* was then carried on, was by persons advancing sums of money to the then Incorporated Company, and in consideration thereof they became partners, and the return of the cargo from the *East Indies* was distributed among them, either specifically or by account, in proportion to the sum advanced. It was not a dividend upon a given stock, but an actual participation, either on account, or in a specific return of goods. Sir *John Wolstonholme*, a man of large fortune, had advanced a sum of money on the adventure in the *East India Company's* trade, and he had received his return in specie, and had disposed of the goods, and a question arose whether he was liable to a commission of bankruptcy. That case is referred to in *Hughes's Abrid.* in 1662. The recital of the act is very strong. The general description of the law with regard to the persons liable to commission of bankrupt all refer to their trading, and where the case is such that it does not obviously strike one, that the course of the dealing is a trading, but the same extensive credit is gained by it as if it were in the proper sense of the word a trading, the legislature has interfered and made them specially liable, as

13. & 14. C. 2.
c. 24.

In the case of the scrivener, banker, &c. Let us consider for a moment what construction has been put on a trading, either by determinations, or Judges opinions that deserve the same degree of weight as actual determinations. A labourer *quasi* a labourer cannot be a bankrupt; it would be idle to say a labourer cannot be made a bankrupt if he buys and sells, I speak only of a labourer acting as such. An artificer cannot, a victualler the same; this is a case that bore a great deal of argument in *Westminster Hall*, but it was settled in a case in *Gro. Car.* upon a doubt entertained by one of the Judges. It was again agitated in *Newton v. Trigg*, and determined in the same manner. A late case has been determined in *B. R.* after a great deal of argument; that was the case of a victualler, which I think right. There has been also a case of a coal merchant in this court. Lord *Mansfield* in *Newton v. Newton* shews he cannot be a bankrupt; in the case of a land jobber it has been said by the court he cannot be subject to the statute. By a construction of the statute originally describing a bankrupt and referring its description to a trading, a farmer who, though no trader, buys and sells considerably, was held not to be within the intent and meaning of these statutes; a grazier or drover is a case excepted by the statute 5. *Ann. c. 22.* In *Cam. Dig.* you will find it stated as a case antecedent to that statute, that a drover might be within the bankrupt laws, but I think that authority slender, it is a reference to *Jonas* 304. where the question did not come on in a way to have that point very accurately considered, it was a motion in arrest of judgment in an action for words for calling
the

the plaintiff a bankrupt, and the declaration had stated his trade to be that of a drover; the court held that the first objection was of no avail, for that a drover was within the statute; now I can easily conceive that a trader bringing an action for words would so describe his trade as to bring himself within the true meaning of the bankrupt laws upon the face of the declaration.

The question since that statute was determined in *B. R.* whether a particular person was a drover within the meaning of it; the dealing was stated to be buying at one fair and selling at another, but the circumstance of the case was likewise, that he had land, and upon that land he fed his cattle; the court held that he was a drover within the spirit and exception of the statute, he was a person described, having connexion with land, this made the distinction between him and the salesman. All these are cases in which, though obviously there is a great deal of buying and selling in their business, yet they are not held by reason of their buying and selling to be subject to the bankrupt laws. The case of *Port v. Turton* I think very well states the probable principle why the legislature has subjected traders to the bankrupt laws and not suffered other people to be included in them. A trader gains, as Lord *Camden* says, an extensive credit upon an uncertain and invisible capital; that credit will be in proportion to the extent of his dealings and can be measured by nothing else, his real means are not visible, and from the very nature of his trade he is liable to unforeseen losses by the failure of those persons to whom he is obliged

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obliged to give credit, and with whose credit his is interwoven. In his behalf the law in these statutes of bankruptcy relieves him in consequence of his large engagements on a fair distribution of what he has; and on the behalf of the creditors they permit them to have an immediate execution in the first instance, and force him to produce his accounts and then make an equal distribution of his effects. But with respect to those persons whose principal business is not buying and selling, but only bringing to market the produce of the lands, they are in a different situation from the trader; their capital is open, it is permanent, it is limited, and their dealings are necessarily confined; their credit rests upon their own endeavours and industry, and can rarely be involved with the credit of other persons, they are therefore not intitled to relief from all their engagements, and to those benefits, which, for the sake of commerce are given to persons to carry on trade. As there is no necessity with regard to them to introduce the execution in the first instance, the summary process for seizing and distress is not necessary; the common course of law in common cases being sufficient. It is plain that the same occupation may bring one man within the statutes and the other not, there cannot be a plainer one than the case of a taylor, the working and the merchant taylor, one only purchasing his instruments and necessaries to carry on the work, the other who buys and sells the cloth; the one is a labourer and therefore not liable to bankruptcy, the other introduces all those consequences of extensive credit and connexions with other persons.

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The question now before the court is, whether a brick-maker upon his own land is a trader; in the first instance what does he buy; it is proved in this case that he bought sand and fuel, and that those are necessary ingredients for carrying on the manufacture; it is not quite accurate to say fuel is an ingredient in the manufacture. Fire is one of the instruments by which the business is carried on, but suppose the case to be different, and that the land not only afforded the brick earth, but likewise (which is a possible case) the sand and fuel; it really strikes me, it requires no argument to prove that the distinction would be too whimsical for a court to say that, in that case, the owner of brick earth, which produces sand and fuel, making bricks and selling them, shall be subject to the bankrupt laws; but if he should occasionally go to the next field to get sand out of it, or to buy fuel of the owner of that estate, that this would be a sufficient buying and selling, to say that he seeks *his trade of living by buying and selling*. But only take a view of the cases; the farmer and the innkeeper buy and sell, they do not carry on their business, therefore, on their own stock. The innkeeper obviously; in the case of the working taylor, he buys his thread, perhaps his buttons and his buckram; in the case of the miner, is it possible to work the mines without the purchase of materials; in the case of the allum works, there are a variety of materials necessary to be purchased, in order to put the naked production of the earth into a manufactured marketable state, and according to a very accurate note I have of Lord *Mansfield's* judgment of that case taken by Mr. Justice *Ashton*, it is very clearly, and I think, very truly stated by him,

him, that if a man mixes ingredients out of his own soil, with others, this trifling ingredient shall not make him a bankrupt. In allum, the kilp and urine are not ingredients, but they are as necessary to make the rock allum, as threshing corn or malleating iron. The question therefore is, whether any authority that the man who makes the best of his produce in coming to market by one, two, or three processes shall be deemed a trader. But I hold that the owner of an estate where he can avail himself either of the produce of that estate intirely, without the addition of any other materials, or by a mixture of small ingredients, in order to put that produce into such a state, as to make it marketable, does not upon that account, subject himself to the bankrupt laws. How does he seek to gain his trade of living, which is the phrase? Why, I fancy there is no plain common man in the country, that would not immediately answer to that question, he lives of his own, he avails himself of that property which comes to him, either by descent, or by purchase, but upon his own stock, and by his own industry, raises to himself a profit out of the land, his possessions are open, and visible to all the world; the extent therefore of his credit may be measured by it, and the course of his business does not complicate or connect his credit with any other persons. In the case of *Port and Turton*, Lord *Camden* was clearly of opinion, that in the instance of the coals, the occupier of the land, disposing of those coals, though for the purpose of trade, being the production of the land, and not in the nature of a manufacture, in that sense of the word, he is not

not to be considered as a trader liable to a commission. The case of *Newton v. Newton*, goes further than the case of *Port and Turton*, being an improvement and sale of the improved produce after it had gone through, by the addition of foreign materials, two or three processes. In salt works, there is a great deal of manufacture. So in the case of cyder made from a man's own orchard. These are all the manufactured produce of the estate, but the person that has the land, making that profit of his land by the disposition of his produce. Upon the grounds that I have stated these are all settled cases. But it is said that a brick-maker may be a bankrupt; no doubt a dealer in allum or coals may be a bankrupt; but the whole depends upon the nature and mode of the dealing. The true distinction is, when the business is only carried on, *as a mode of enjoying the profits of a real estate*, and, when it is carried on substantially, and independently as a trade, it would be an uncommon use of the word, but it is a trade in gross. The other is connected with the means of enjoying the estate by a mode of making profit of it. The man's situation, the extent of his credit, and the line of his dealings are all to be measured by his real property, and not by the course of his dealings. Then it is argued, there is a difference between the real owner and the lessee, the lessee being the purchaser of the earth by the rent which he pays, and every profit which he derives out of the land, the rent is supposed to be a compensation for, and therefore he is to be deemed a purchaser of the brick earth; and that if a person specifically, purchases the brick earth, he would be liable to a commission. I take

it the buying and selling must be of an actual commodity; we are accustomed to use the word *purchase*, for many purposes of legal reasoning; a lessee is a purchaser of all he derives out of the land, by the payment of the rent, but that certainly is not the idea in which the words *buying* and *selling* are used in this statute. The common acceptance is the actual purchase of the earth by the load, or acre; buying it as earth; and not taking it as part of the profits of the land: in this case, the lessee enjoys the land, not for the purpose of making bricks, but for the sake of the various profits that land will produce, and in consequence of the manner of conveying the estate, from the lessor to him, he thinks himself at liberty to dig the surface, and take the brick earth out of it; the lessee of land, during the term, is, with regard to this question, exactly the same as the owner of the land. The case of *Harrison v. Tomlinson* in the court of Chancery, has been mentioned, and the reasoning of that case applies very much to the present; in that case, he was a purchaser of the earth, by the payment he made to the lord of the manor for the land he had taken from the waste. There is no doubt that if a purchase had been made of the earth, he is not then making a profit of the soil, but he is a manufacturer, and trader; the general reasoning of the Court of Chancery goes thus far, that a man cannot be made a bankrupt, merely by making use of the produce of his own land. He has in a lease of 21 years, as much dominion over the land, as the owner in fee; the credit that is given him is in respect

respect of the estate he holds. Judgment was pronounced for the plaintiff.

One single act of buying and selling will not make a man a bankrupt; but a repeated practice and endeavour to gain profit by it is required. Not will buying and selling to promote a business or trade not within the bankrupt laws, subject the party to them; but it must be such a buying and selling in gross or retail, as is the party's principal means of living. But if the buying and selling is in proportion to any other way he has of living, then he may become a bankrupt; as in the case of *Mayo v. Archer*. Two of the Judges were of opinion, that where a man bought great quantities of wool or hops, though he has a farm and sheep of his own, and several hop gardens, he shall be accounted a trader in these commodities; and so shall an innkeeper if he turn corn-chandler. They said it is true, the jury had not found that *Baxter* got the chiefest part of his livelihood by buying and selling potatoes; but it is not the quantity which is material, if it is in proportion to other goods which he buys and sells. For if a man has an orchard, and buys several quantities of fruit of other people, though not so many as he has in his own orchard; yet this shall make him a trader and consequently subject him to the statutes of bankruptcy. An innkeeper cannot merely as such be bankrupt; but as they frequently sell liquors to be consumed out of their houses, questions sometimes arise, how far such selling of commodities they have bought, is to be considered within the statutes. One *Thickpenny*, who was an innkeeper, not only sold liquor to his guests in his inn, but also divers great quantities

2. Black. Comp. 476.

Mayo v. Archer
1. Stra. 513.

2. Mod. 471

Bucall v. Hogg
3. Will. 146.

quantities of wine, rum, and brandy; by four, five, and six gallons at a time, to several persons living two or three miles distant from his inn, for them to retail and sell out again; and had done this for some years. Lord Chief Baron *Parker* was of opinion that this was not a sufficient trading to make him a bankrupt. But the court of Common Pleas said, it not appearing what proportion *Thickpenny's* trade in his inn, bore to his trading abroad, and out of doors; they could not judge whether he was liable to be a bankrupt or not. And it was said by *Wilmot* Chief Justice that if *Thickpenny's* trade and profits in his inn was much larger than his trade and profits abroad, out of the inn, he should incline to think he was not liable to be a bankrupt. If it should come out in evidence, that *Thickpenny* got 600*l.* *per annum* in his inn, and not 600*s.* *per annum* by sending out and selling liquors abroad, he was clear in opinion he could not be a bankrupt.

A victualler is to be considered in the same light as an innkeeper in respect to the bankrupt laws; therefore a victualler who sells liquors in his house, and only sells them out of the house in small retail quantities, as every publican does, is not liable to a commission of bankruptcy. Accordingly on a question, whether one *Shrowder*, who was a publican or victualler could be a bankrupt: Lord *Mansfield* delivered the opinion of the court, observing that the analogy between the two cases of an innkeeper and a victualler, is so strong, that it cannot be got over. And that court were all clear, this man was not within the bankrupt laws; upon the authority of the determined case of an innkeeper, and also upon the

Saunderson v.
Rowles.
4 Burr. 2067.

the reason of the thing. He makes no particular contract like a trader; he cannot be said to get his living by buying and selling as a trader does. He buys only to spend in his house; and when he utters it again, it is attended with many circumstances additional to the mere selling price. He cannot be considered as a trader at large.

The only authority against this, is the doctrine of Lord Chief Justice *Holt*, that though an innkeeper cannot be a bankrupt, yet a victualler may, reported in 1 Lord *Raymond* 287. But that is an *obiter* saying only; and not a resolution or determination of the court, or a direct solemn opinion of the great Judge from whom it dropped. However, even this authority is crossed by the case of *Newton v. Trigg*. 3 *Mod.* 327.

Therefore this mere *obiter* opinion ought not to weigh against the settled direct authority of the cases which have been deliberately and upon argument determined the other way.

His dealing as a victualler, in the ordinary course of his business, is not such a contract, as is made amongst merchants and shopkeepers or other dealers, in the ordinary course of trade and commerce.

The inconvenience would be very great, if these persons were liable to commissions of bankruptcy. It would be very mischievous that commissions should be taken out, at 70%. or 80%. expence, in every case where a victualler should be unable to pay his debts; his whole effects might scarce suffice to answer the expence of the commission. Therefore the court were clear, that this man upon the facts stated, was not an object of the bankrupt laws.

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Fort v. Turton.
2. Will. 169.

The buying and selling land, or an interest in land, is not a buying and selling within the statutes, which must be restrained to personal things. As where *J. S.* in consideration of 1600*l.* grants, bargains, and sells to *Sparrow*, his executors, administrators and assigns, a certain mine of coals, reserving a rent, and a certain quantity of coals to be delivered to the said *J. S.* every year, with power of re-entry in case of non-payment. There is no limitation of time or term, but it is a sale and purchase of the whole mine so long as any coals are to be gotten therein. *Sparrow* worked the mine and sold the coals, and then committed an act of bankruptcy. And whether the buying the coal mine, working it, and selling the coals, can make him liable to be a bankrupt, within any of the statutes concerning bankrupts, was the question.

The court said, the single question is, whether *Sparrow* can be deemed to be a trader within the true meaning of any of the statutes made concerning bankrupts. The statute 21 *J. 1. c. 19.* is the ruling statute whereby this matter must be determined. The person who shall be deemed a bankrupt, is there described; viz. First he must be a person using trade or merchandize; 2dly, the seeking his living by buying and selling. By buying and selling what? Surely not by buying an interest in land, and selling the profits thereof; this can never come within the idea of using the trade of merchandize, or getting a living by buying and selling, in the sense of the legislature. From the idea we have of merchandize the line may be drawn between the landholder, and the merchant. One would wonder there could have ever been

been any doubt about a farmer; for if every buyer and seller was liable to be a bankrupt, many of the first persons in the kingdom would be liable to be so. Whatever the owner of the land in fee may do, surely he who rents it may do the same. If the former may be a buyer and seller, and not be liable to be a bankrupt, why may not the farmer be so also? His tilling the land, husbandry and stock on his farm, are known to every body; yet he seeks his living by buying and selling. So an innkeeper, a victualler and an alehouse-keeper, get their living by buying and selling, but their way of buying and selling, is not within the meaning of any of the statutes of bankrupts. The buying and selling which is within those statutes is to be confined to persons who live by a credit gained, on an uncertain capital stock.

There is no difference between a lease for years, and this case of the coal mine. *Sparrow* clearly had a chattel interest in the land, like an *eject*. Though a mine be an inheritance, yet it may be severed from the inheritance, by the grant now made; but it is certainly an interest in the land. If *Sparrow* was neither the farmer, nor owner of this coal mine, what was he? He must be one or the other; and neither the owner, nor farmer of an interest in land, by buying and selling the same, or profits thereof, are liable to bankruptcy. The case of a brick-maker is very different; the earth is manufactured, and turned into quite another thing; but coals carried to market, are the same as they were found in the earth. Upon the whole, it is impossible to

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make

make this man a trader, within the meaning of the statutes concerning bankrupts.

Dec. 19th 1707.
2 Will. 170.

Lord Chancellor *Cowper* had before determined the same point, that a buyer of coals in the mine, is not a trader within the statutes; but if he sells them together with others that he bought at market, then he becomes a trader liable to a commission.

Drawing and re-drawing bills of exchange may make a man liable to be a bankrupt; but every drawing and re-drawing is not sufficient.

Hankey v. Jones
Cowp. 745.

Thus on an issue directed by the court of Chancery to try whether the defendant was a bankrupt; at the trial the following case was made for the opinion of the court. That the defendant, a clergyman, being possessed of lands in the isle of *Ely*, and engaged in expensive works of cultivating and draining such lands to raise money for that purpose and his other occasions, did before the year 1774, but more particularly in the years 1774, 1775, and 1776, draw bills, very many in number, and to a large amount, which were accepted by different persons: That the defendant in order to provide money for the payment of the said bills, sent cash and other remittances to the acceptors, and allowed to some of his bankers a quarter *per cent.* for paying his bills; and also in many instances, paid a quarter *per cent.* to the persons who got them discounted, besides interest at 5 *li. per cent.* The defendant also borrowed accommodation bills, to a large value, in lieu of which he gave his own bills or notes to the same amount.

The question for the opinion of the court was, whether

whether this was trading, within the true intent and meaning of the bankrupt laws?

Lord *Mansfield* said, the case particularly states the only thing done by the defendant, from which it can be argued, that he is become a bankrupt within the description and meaning of the bankrupt laws.

The facts necessary to shew what was the nature of the business carried on by the party, being laid before the court, whether they come within any of the descriptions enumerated in the statutes, is a question of law, upon the construction of the statutes themselves. It is not using an *act* of merchandize. Every man does that: every man buys: but that does not bring a man within the description of a person liable to become bankrupt. He must use the *trade* of merchandize. He must therefore sell as well as buy, nor will every act of selling do; for there are various species of selling, which are no trading within the meaning of the acts; as where a farmer buys in sheep and sells them again. The question in this case is, whether the circumstance of a man borrowing money on his own bills, for his own occasions, makes him an object of the bankrupt laws—I had not a particle of doubt at the trial.

As to the case of *Richardson v. Bradshaw*, see what it was. *Wilson* was an agent to 26 regiments and lived in *London*. *Johnson*, his correspondent, was also agent to many regiments and lived in *Dublin*. The troops were occasionally in *England* and *Ireland*, and when the troops that were in *Wilson's* department were in *Ireland*, *Johnson* raised money to pay them. And so *vice versa*. *Wilson* from the year 1745, to 1757, drew on *Johnson* to the amount of

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280,000*l*.

Richardson v.
Bradshaw.
1 *Atk.* 128.

280,000 *l.* and *Johnson* drew on *Wilson* to the amount of 290,000 *l.* They took no commission, and there was no reason why they should; for the advantage was equal. But what was the purpose of this re-drawing? They drew for the money of many thousand persons, officers, widows, and soldiers together; and there was a visible gain from thence arising from the exchange—What was the determination of the jury? though it was not the province of the jury, it was a very sensible one. Drawing and re-drawing may or may not be exercising trade and merchandize—It depends on circumstances—Suppose a person in *Yorkshire*, with a large estate, has occasion for money to pay a debt on mortgage, or any other security, in the city of *London*—He draws on his banker for it, and to repay him, tells the banker to draw on him by bills—Would that be drawing and re-drawing, so as to constitute a trading within the meaning of the bankrupt laws? Certainly not—But take it the other way, that a person has the cash of other people, to the amount of many hundred thousands of pounds, and the benefit of the exchange arising from the remittance of it; that is merchandizing, and that was the ground upon which the jury went, in the case of *Wilson*. There is no greater fault in citing cases, than that of drawing general conclusions from particular premises. In *Wilson's* case it was said, that drawing and re-drawing was merchandize. It does not follow that all drawing and re-drawing is merchandize. The words of the jury in *Wilson's* case were, that drawing and re-drawing for such large sums of money, is trafficking in exchange. But there was no re-drawing in the present case: nobody re-drew on the defendant, and all the drawing was

was to his loss, and tended to his ruin. For he paid a quarter *per cent.* commission, besides interest on every bill he drew. With regard to what passed on the trial in *Wilson's* case, with great respect to Lord Chief Justice *Lee's* memory, I think the jury asked him a very proper question; whether this drawing and re-drawing was, in point of law, a trading in merchandize within the statutes concerning bankrupts? And as the note is taken, he might have directed them, as it is there said he did. But the report says, he told them, it was a question of fact, and not of law. With all deference to his opinion, it was a question of law upon the fact. It may be proper to leave it to the jury, whether the person gets a profit, or remits other people's money; but the fact being established, the result is matter of law. In *Wilson's* case he had vast sums of other people's money: but this case is stript of every circumstance of that kind: merely a drawing by a person, for the purpose of improving his own estate, and he pays discount on what he draws. Therefore there is no colour for saying he is within the description of the bankrupt laws.

The having a share in a ship, if the owner does not freight it, will not make a man a bankrupt, any more than having a share in a hackney coach, or letting horses to hire.

There can be no such thing as an equitable bankruptcy, it must be a legal one; and the party must be a trader in his own right; for if a person that is a trader, makes another his executor, who only disposes of the stock of his trade, it will not make the executor a trader, and liable to a commission of bankruptcy; and

1 Vent. 29.
Comb. 182.
1 Sid. 411.

Small v. Oudley
2 P. W. 429.

Ex parte Nutt
1 Atk. 102.

and even if the executor is the representative of a wine cooper, and finds it necessary to buy wines to refine the stock, left by the testator, it will not make him a trader.

Gibson v.
Thompson
3 Keb. 451.

1 Com. Dig.
522.

Colt v.
Nettervill.
2 P. W. 308.
2 Black. Com.
476.

13 & 14 C. 2.
c. 24.

Bird v. Major.
2 Ld. Raym.
351.

3 G. 1. c. 3.
l. 43.
13 & 14 C. 2.
c. 24.

4 G. 3. c. 37.
6 G. 1. c. 18.
8 G. 1. c. 21.

A contract to victual the fleet is no more than to table with a private man, which will never make a trader. The King's butler or steward, or any other office is not a trader. The commissioners of excise, school-keepers, and sutlers of armies. Butlers and stewards of inns of courts, and farmers of the customs are not traders.

Buying and selling bank stock, or other government securities, will not make a man a bankrupt, they not being goods, wares or merchandize, within the intent of the statute, by which a profit may be fairly made; and although one *Wolfenholme* was declared a bankrupt, as having *East India* stock, this was reversed by an act of parliament, declaring that neither he nor any other person should be liable to bankruptcy, in respect of their having *East India* stock; so that stocks, or the dealing in them, will not make a man liable to bankruptcy.

Lord Chief Justice *Holt* inclined to think that a share in the Stationer's company, would not make a man a bankrupt, but Lord Keeper *Wright* held otherwise.

No member of the Bank of *England*; of the *East India*, or *English* Linen company; nor any person circulating Exchequer bills; nor any adventurer in the Royal Fishing trade, or *Guinea* company; nor any member of the *London Assurance*, or *Royal Exchange*, or *South Sea* companies, shall be deemed bankrupt

bankrupt on account of his stock in the said companies.

Any person trading to *England*, whether native, denizen, or alien, though never resident as a trader in *England*, may be a bankrupt, if he occasionally comes to this country and commits an act of bankruptcy.

Alexander v.
Vaughan.
Comp. 403.

Accordingly one *W. Grice*, a subject born, who lived in *Dublin*, and traded as a merchant in *Ireland*, and got his living by buying and selling, but frequently came into *England*, and bought goods there and sold them in *Ireland*, and became indebted to divers persons; and once sold in *England* a parcel of neat's tongues, and at another time in *Ireland*, a parcel of tallow, to be delivered at *Chester* in *England*, which was done accordingly; and afterwards committed an act of bankruptcy in *England*. The court resolved that he was a bankrupt. For though he bought and sold but once in *England*, it is not necessary that he do so; for many merchants do only buy beyond sea and sell here, and others do only buy here and sell beyond sea, for it is trading that makes a man capable of being a bankrupt, and it is plain that *Grice* did trade in *England*.

Doddsworth v.
Anderson.
Raym. 375.

So where a gentleman of the *Temple* went from hence to *Lisbon*, where he turned factor, and traded to *England*, and broke. The court held him a bankrupt by reason of his trading hither and back again, which gained him a credit here.

Bird v. Sedgwick
1 Salk. 110.

And in a petition *ex parte Smith*, it appeared that *John Ashley* went from *England* in 1720, and resided in *Barbadoes* till 1735, where he was a factor and planter, and traded to *England* by sending goods from his plantations, and receiving goods back again

Ex parte Smith
Comp. 402.

bought in *England*; and disposed of goods sent from *England* to *Barbadoes*, for merchants in *England* as a factor; and being greatly indebted, came to *England* in April, 1737, and committed an act of bankruptcy. A commission issued. Upon a question whether he was within the statutes of bankrupts; the case of *Sedgwick v. Bird*, and *Dodsworth v. Anderson* were cited. Lord *Hardwicke* said, if this point had not been decided in *Sedgwick's* case, he should have doubted; but as it was there decided, he held himself bound by that determination.

In another case Lord *Hardwicke* said, if a person carries on a trade in one kingdom belonging to the crown of *Great Britain*, and comes over to another, a commission may be taken out by a creditor, in the place where the bankrupt happens to be, as he has traded to this kingdom and contracted debts here. There are several instances of this kind, where persons belonging to the plantations abroad, and which is their sole place of residence, yet happening to be in *England*, have had commissions of bankruptcy taken out against them here.

And, conformably to these decisions, it has been settled that where a merchant trades to *England*, if he commits an act of bankruptcy here he may be made a bankrupt. Therefore in an action of trespass against the messenger to a commission, where, upon the trial, it appeared, that *Alexander* the plaintiff, who was a native of *Scotland*, resided there, and had a great house of trade in *Edinburgh*. Besides that business, he was concerned as partner with *Bell and Co.* in a great brewery. In both characters he might be considered as one of the greatest traders in *Europe*, and

Ex parte
Williamson,
3 Atk. 82.

Alexander v.
Vaughan.
Cowp. 398.

and he traded to all parts of the world. He comes to *England*, and being there occasionally, is arrested and lies in prison two months.

The question was, whether by the *English* statutes against bankrupts, a person to come within the meaning and description of a trader there named must not be a resident trader; that is, whether as the acts of bankruptcy must be local in *England*, the trading should not be so likewise? Lord *Mansfield* delivered the opinion of the court, as follows. The case is simply this. A merchant who has traded to *England*, but who is a native of, and constantly resident in, a country not subject to the *English* statutes concerning bankrupts, comes occasionally to *England*, is arrested, and lies in prison two months, which is an act of bankruptcy. The question is, whether such person having traded to *England*, not in *England*, is an object of the bankrupt laws?

The circumstance of a trader being a natural born subject or a foreigner makes no difference. The last section of the statute 21. *Jac.* 1. c. 19. expressly declares, That strangers as well as natural born subjects and denizens, shall be subject to the bankrupt laws: and therefore it puts that point out of the case. But it still leaves the question, whether both natives and foreigners must not be traders in *England*.

I own when the general question was started at the trial, I felt great objections, upon principles of justice to the idea of a foreigner, occasionally coming here, being subject to the bankrupt laws. Whoever gives credit, gives it upon the property a man has in the country

country where the credit is given. I was also struck with the very inconvenient consequences that might arise in different parts of our dominions, if a trader might come over here behind the back of his creditors, hurry through a commission, and obtain his certificate, before his creditors abroad could even know the commission had issued. On the other hand, it appeared there was a locality in the description of the acts of bankruptcy, and that the trader, whether a native or foreigner, must be in *England* when he commits an act of bankruptcy.

The case *ex parte Williamson*, 1. Atk. 82, did not strike me then as it does now; for the opinion there given was not an opinion founded on any part of the case before the court. At the same time, I never doubted, but many such commissions have issued, and that many persons have come from *Ireland*, and the plantations, on purpose to get commissions taken out against themselves. I recommended it therefore to the counsel to search for cases decided upon the point. That search has been made, and several authorities have been produced.

I am confirmed in every objection that arose in my mind upon general principles, by what Lord *Hardwicke* says; but if in the year 1750, he did not think the matter entire, I think it is not so now. However it may stand upon principles, I think we are bound by the authorities. The cases of *Dodsworth v. Anderson*, and *Bird v. Sedgwick* are strong authorities upon the subject.

Ex parte Smith
Cresp. 402.

But the most material authority of all, is the case *ex parte Smith* in Chancery, upon the bankruptcy of one

one *Ashley*, who was never resident in *England*, nor had ever traded in *England*. That case was solemnly argued before Lord *Hardwicke*, and the several cases above mentioned were cited and relied on. The bankrupt came over on purpose to get the commission taken out against him. The opinion given by Lord *Hardwicke* in that case, was much stronger, because he had no doubt, that the commission was fraudulent; and therefore he gave his opinion both against his inclination, and against what he thought the justice of the case. The words of his opinion are very strong. "The new laws relating to bankrupts have turned the edge of commissions of bankruptcy, from being, as they were originally, remedial to the creditors, and in the nature of punishments to the bankrupt, whom they consider as an offender; to be the accidental occasion of great frauds. This has been the case here; and I will, as far as I can, prevent the extending them to other parts of the world. If the act of bankruptcy had been committed abroad, to be sure no commission ought to go against him for that act. The affidavits speak only of his trading to *England* while he resided at *Barbadoes*. If this point had not been determined in *Sedgwick's* case, I should have doubted of it, but that case is in point, and must govern this. However I will suspend the certificate till the creditors abroad have an opportunity to send over proofs of their debts."

This throws a different light upon the case *ex parte Williamson* in the year 1750, which was 13 years

Of the Trade, Occupation, &c.

years afterwards, and shews that Lord Hardwicke continued of the same opinion then, though the same point was not immediately before him at the time. Here the plaintiff traded to *England*, and never was a resident trader in *England*, but came hither only *occasionally*. The consequence is, that a nonsuit must be entered.

C H A P. IV.

Of the Act of Bankruptcy.

BY the 13. *Eliz.* c. 7. "If any merchant, &c.
 "depart the realm, or begin to keep house, or
 "otherwise to absent himself, or take sanctuary; or
 "suffer himself willingly to be arrested without
 "just or lawful cause, suffer himself to be outlawed,
 "or yield himself to prison, or depart from his dwell-
 "ling-house to the intent or purpose to defraud or
 "hinder any of his creditors of the just debts or duty
 "of such creditor, he shall be reputed, deemed, and
 "taken for a bankrupt."

The 1. *J. 1. c. 15.* repeats the several acts of
 bankruptcy declared in 13. *Eliz.* and adds "The
 "willingly, or fraudulently procuring himself to be
 "arrested, or his goods, money or chattels to be
 "attached or sequestered, or the making or causing
 "to be made any fraudulent grant or conveyance of
 "his lands, tenements, goods, or chattels, to the
 "intent, or whereby his creditors may be defeated
 "or delayed from the recovering of their just and
 "true debts;" and also some others which have
 been since repealed by 10. *Ann. c. 15.*

21. *J. 1. c. 19.* "Any merchant &c. who by himself
 "or others shall procure or obtain any protection
 "other than such person as shall be lawfully pro-
 "tected by privilege of parliament, or exhibit unto
 "his majesty, or unto any of the king's courts any
 "petition or bill against his creditors to compel them
 "to accept less than their just debts, or to procure
 F "longer

"longer time of payment than was given by the
 "original contract, or being *arrested* for debt shall
 "after his arrest lie in prison two months or more;
 "upon that or any other arrest or detention in pri-
 "son for debt, or being arrested for the sum of
 "100*l.* or more of just debt or debts, shall at any
 "time after such arrest *escape* out of prison, shall be
 "accounted and adjudged a bankrupt to all intents
 "and purposes, and in the said case of arrests or
 "lying in prison for debt from the time of the
 "first arrest." This statute contains some other
 acts of bankruptcy repealed by the 10. *Ann. c. 15.*

5. *Geo. 2. c. 30. s. 24.* "If any bankrupt, after
 "issuing any commission against him, pay to the
 "person who sued out the same, or otherwise give
 "and deliver to such person goods or any other
 "satisfaction or security for his debt, whereby such
 "person shall privately have and receive more in the
 "pound in respect of his debt than the other cre-
 "ditors, such payment of money, &c. shall be such
 "an act of bankruptcy whereby on good proof
 "thereof, such commission shall and may be super-
 "seded, and it shall be lawful for the Lord Chan-
 "cellor to award to any creditor petitioning another
 "commission. And such person so taking such
 "satisfaction as aforesaid, shall forfeit and lose as
 "well his whole debt as the whole he shall have
 "taken and received, and shall pay back or deliver
 "up the same or the full value thereof, to such per-
 "son as the said commissioners acting under such
 "new commission shall appoint, in trust for and to
 "be divided amongst the other creditors of the bank-
 "rupt in proportion to their respective debts."

4. Geo. 3. c. 33. "Any single creditor, or two or more creditors, being partners, whose debt shall amount to 100*l.* or upwards; or any two creditors whose debts shall amount to 150*l.* or any three or more creditors whose debts shall amount to 200*l.* of any person deemed a merchant, &c. having privilege of parliament at any time upon affidavit being made and filed on record in any of his Majesty's courts at *Westminster*, by such creditors that such debt is justly due; and that every such debtor as they verily believe is a merchant, &c. may sue out of the same court summons, or an original bill and summons against such merchant, &c. and serve him with a copy thereof, and if such merchant, &c. shall not within two months after personal service of such summons, pay, secure, or compound for such debt to the satisfaction of such creditor, or enter into a bond in such sum, and with two such sufficient sureties, as any of the judges out of that court out of which such summons shall issue shall approve of, to pay such sum as shall be recovered in such action, together with costs, he shall be accounted and adjudged a bankrupt from the time of the service of such summons."

The legislature having by positive laws, declared what acts shall be considered as criterions of insolvency or fraud whereon to ground a commission; none other can be admitted by inference or analogy. Therefore it is not an act of bankruptcy for a trader secretly to convey his goods out of his house and conceal them to prevent their being taken in execution;

F 2

Cole v. Davies:
1. Ld. Raym.
725.

Bull. N. P. 40. tion; nor to give money for notice, when a writ should come into the sheriff's office.

4 Bur. 2478. So if a trader procure his goods fraudulently to be taken in execution, or makes a fraudulent sale of them, it is not an act of bankruptcy, though void against creditors.

Harman v.
Spottiswood.
Mich. 13 G. 3.
B. R.

Therefore in an issue from the court of Chancery to try whether *Gray* was a bankrupt on the 5th of April. On a special case, it appeared that *Gray* had borrowed money from *Spottiswood* the defendant, upon a bond and warrant of attorney to confess judgment. *Spottiswood* entered up judgment, and sued execution which was executed the 5th of April. The transaction however was kept secret; the officer in possession appearing to be an indigent relation of *Gray's*, who continued in business as a coach maker, until the 25th May when he was arrested, and an inventory made out, and the goods sold, the money remaining in the hands of the sheriff. During the time the bankrupt remained in possession he contracted large debts and paid to the defendant on divers accounts, 1390*l.* which was more than double the debt on judgment, that being only 500*l.*

It did not appear in evidence that the judgment was entered up, or the execution sued at the instance of the bankrupt.

Lord Mansfield. It struck me at the first trial, that execution did not come within the word attachment. A concealed execution could have no effect, because it could not prevent an open execution taking place. By the custom a sequestration only stops the goods in their progress. I thought this

this a narrow construction, as all clauses in the bankrupt laws are to be construed liberally. Upon the second trial, I summed up to the jury, that execution was within the statute. The jury thought it was a *bona fide* debt, and that the execution was adverse.

It appeared *Spottiswood* had in the interval, received money from *Gray*, and did not bring it to the account of the execution, but to other debts; this struck me strongly as a fraud against the other creditors. I do however now extremely doubt, whether an execution is an attachment. Several of the statutes, say attachment in *London*, or other places. There is no case, nor *dictum* to shew an execution to be an attachment, which is strong. I shall give no opinion on the matter; it being unnecessary here. An act of bankruptcy being a crime, there can be no act of bankruptcy by construction. In *Pewtreffs v. Roberts*, there was a great fraud, but it could not be made an act of bankruptcy. The act of bankruptcy, must then be an execution procured by the defendant. This was *bona fide* and adverse, and the agreement was made after the execution came in, and proved to be continued from time to time.

It seems the subsequent agreement cannot be a procuring the execution, as it takes away the effect of it in case of a second execution, therefore the day of the bankruptcy was the 10th of *May*.

Mr. Justice *Alton*. The lien must be ostensible, and not real, and must be in trust for the bankrupt. The bankrupt acts are *juris positivi*, no positive

Of the Act of Bankruptcy.

crime can be created by construction, the act of bankruptcy must be clearly within the acts.

Mr. Justice *Willes*. Execution is not within the word attachment. The word arrests, immediately follows, which signifies on *mesne* process. The jury have found it a *bond fide* debt, and that the execution was not procured by the bankrupt. Many frauds are not within the acts, and consequently, not acts of bankruptcy.

Mr. Justice *Asbursht*. I think execution not within the statutes; here is a positive law, creating a crime; the crime cannot be carried against the intent of the act.

The court therefore held he was not bankrupt on the 5th of *April*, and the verdict was entered for the plaintiff.

Clavey v.
Haley.
Cowp. 429.

This authority has been confirmed by a subsequent decision, in which the court declared they adhered to the opinion given in *Harman v. Spottiswood*, that a fraudulent execution, though it will not stand in the way of creditors, being void as against them, yet does not of itself constitute an act of bankruptcy.

2 Salk. 110.
Palm. 325.

Many of the acts of bankruptcy above described, are in themselves equivocal, and capable of being explained by circumstances; for to bring them within the purview and meaning of the statutes, it is absolutely necessary, they should be done to defraud and delay creditors from recovering their just debts.

The better to obtain a clear, and comprehensive view of the decisions upon the subject of this chapter, I shall consider separately each act of bankruptcy, upon which any question appears to have been raised; premising that the statutes of bankrupts are local

local and do not extend to acts done in foreign countries, or other dominions of the crown of Great Britain. Alexander v. Vaughan. Cowp. 398.

Departing the realm, will not be an act of bankruptcy, unless done with a view of defrauding or delaying creditors; but if it appear that they are in fact delayed, by such absence, it will be the same as if the original departure was fraudulent.

Therefore one *Woodier* a mercer on *Ludgate Hill*, Bull. N. P. 39. who fled beyond sea, for the murder of his wife, whereby his creditors were in fact prevented from recovering their debts, was held to have committed an act of bankruptcy.

But a trader going abroad, to avoid performing a duty, will not therefore be a bankrupt, as if it be to avoid an arrest upon an *excommunicato capiendo*, or the service of process to enforce a decree in Chancery, unless it be a decree for the payment of money; but if creditors, by such absence are delayed, and defrauded, it then becomes an act of bankruptcy, according to the principle of *Woodier's case*. 1 Com. Digg. 521.

Beginning to keep house or otherwise to absent himself. Denial to a creditor, is *prima facie* evidence of this act of bankruptcy. Bull. N. P. 39. But as the statute requires it to be with an intent to delay or defraud creditors; the mere denial is therefore capable of being explained by circumstances, such as sickness, company, business, or even the lateness of the hour; for Lord *Hardwicke* held eleven o'clock at night a very improper hour for creditors to call, and that Ex parte Hall, 1 Atk. 201. a man's denying himself at such an hour, would not make him a bankrupt. Neither will an order by the debtor to his servant to deny him to creditors be sufficient. For where a trader gave orders to

Of the Act of Bankruptcy.

Hawkes v.
Saunders.
Trin. 24 Q. 3.
B. R.

his fervant to deny him to creditors on the 26th of May, but was not actually denied to a creditor, till the 28th, the court held the actual denial, and not the order to deny, constituted the act of bankruptcy.

Stone 123, 124.

Keeping in another man's house or chamber, having no house of his own, or on ship board, is an act of bankruptcy; so a miller keeping in his mill.

1 Com. Dig.
523.

Any keeping house for the purpose of delaying a creditor even for a very short time, will be an act of bankruptcy, notwithstanding the party afterwards goes abroad, and appears in publick. This indeed is contradicted in one case, where process having issued against J. D. to arrest him, he kept his house to save himself from arrest; but afterward went to the market and to other places, and when he heard again of a new process out against him, he kept his house a second time; but afterwards went at large: and the court held he was not within the statutes of bankrupts, because he used to go at large, and it might be that his policy would not prevent the serving of the process, for he might be met withal unwittingly.

Cro, Eliz. 13.

But the authority of this case is shaken, if not intirely dead away, by subsequent decisions; for upon a question whether a person who after having been arrested kept at home, and declared he did so, to avoid the consequence of a former arrest, had by this conduct committed an act of bankruptcy, the court of Common Pleas was of opinion that he had. And in a still later case, it was held that a trader leaving his house to avoid being arrested on a particular day,

Barnet 160.

Hall's case.
2 Stra. 809.

to gain the term, and then offering bail was an act of bankruptcy.

A general denial will not be sufficient, but it must be a denial to a creditor who has a debt at that time due; for if he is only a creditor by a note payable at a future day, a denial to him will be no act of bankruptcy; the statute requires a keeping house to defeat or delay creditors of their debts, which cannot be where the creditor has no debt due to demand; nor will denial to a person coming on behalf of a creditor to demand a debt be within the statute. Accordingly in an action of *Troveur*, brought by the assignees of a bankrupt for a parcel of goods taken in execution, Lord *Camden* was of opinion, that in point of evidence, the action could not be supported unless the plaintiff proved, that the person to whom the bankrupt had been denied antecedently to the execution, was a creditor, and he said being denied to a person who came in behalf of the creditor, was not sufficient; and this, though it appeared, and was given in evidence, that the bankrupt had been denied to many creditors afterwards, and continued to be denied daily till the commission issued.

7 Vin. Abr. 6.
Pl. 14.

Barrow v. Foster
Norwich.
S. A. 1765.
Green 44.

It frequently happens that traders in declining circumstances call their creditors together to inspect their affairs, and determine whether a commission shall issue against them or not, and, if thought advisable, it is usual for the trader to deny himself to a creditor for the purpose of making an act of bankruptcy.—However, it is doubtful how far such concerted denial will be an act of bankruptcy to affect the interest of third persons.

The

Hooper v. Smith
2 Black. rep.
441.

The statute requires a denial with an intent to delay or defraud the creditor, but it is clear that a denial by agreement cannot be said to be with either of those intents, and Lord Mansfield in *Hooper v. Smith* observed, he much doubted how far such an act of bankruptcy committed by consent and agreement is valid, with respect to a third person not privy to such agreement; certainly, said his Lordship, the bankrupt himself, and all those who come in under the commission, are concluded to say any thing against it. But the relation of a commission of bankrupt to the time of committing the act, though useful to prevent frauds, is sufficiently hard already upon private persons; and ought not to be extended further. An act of bankruptcy in the eye of the law is considered as a crime; but where is the crime of denying oneself to another, by previous consent and agreement?

Bull. N. P. 39.

Bramley v. Munde.
Bull. N. P. 39.

And this point has been variously determined at *Nisi Prius*, for Lee Chief Justice ruled that a denial by agreement was no act of bankruptcy. On the contrary Mr. Justice Forster held, that the bankrupt's being denied to the plaintiff's clerk (who was sent to demand money in consequence of an agreement made at a meeting of the creditors two hours before, at which the bankrupt and the plaintiff both were,) was sufficient. But, however the point may be finally settled, it is certainly frequent for the debtor to deny himself to a servant sent by the creditor for the express purpose of grounding a commission on such denial.

3 Salk. 110.
3 Burr. 484.

Departing from his dwelling-house, may become an act of bankruptcy or not, according to the motive by which the party is impelled; if it be done with a view

view of defrauding his creditors or even delaying them, and his absence but for a single day, it will be an act of bankruptcy, and his very absenting himself is sufficient *prima facie* evidence of an intention to defraud or delay his creditors, but it must be a voluntary absenting, and not by means of an arrest. And as keeping house to avoid performing a duty will not be an act of bankruptcy, so neither will the departing from his dwelling house on the like occasion; for it is the absenting to avoid the payment of money which marks the insolvency, and therefore becomes an act of bankruptcy; consequently absconding to avoid an attachment upon an award for not delivering of goods, is not an act of bankruptcy, but on the other hand absconding to avoid an attachment, for non-payment of money in pursuance of an award is within the statute.

Suffering himself to be outlawed. An outlawry in Ireland does not make one a bankrupt, but in the county palatine of *Durham* it does. However an outlawry does not appear to be an act of bankruptcy, unless it be suffered with an intent to defraud creditors.

Lord Chief Baron *Comyns* adds, that if the outlawry be reversed before the commission issues, or for default of proclamations after the commission, it shall not be an act of bankruptcy. But this opinion is supported by the respectability of that author alone, he quotes no authority and therefore it may be reasonably doubted whether such positions can be considered as law; for if the outlawry was originally fraudulent, and intended to defeat or delay creditors, it should seem that no subsequent event would be sufficient

Hall's case.
2 Stra. 809.

Phillips and Peck
v. Sheriffs of
Essex at Nisi
Prius, before
Eyre, C. J. C.P.
Green 53.

Lingood v. Eada
1 Atk. 196.
1 Atk. 196.

Ex parte Lingood
1 Atk. 240.

Com. Dig. 524.

Stone 124.
Billing. 94.
Good. 23.

1 Lev. 13.

sufficient to clear the fraud, or prevent the effect of the bankrupt laws.

*Milling. 95.
Good. 25.*

Yielding himself to prison, is to be intended a voluntary yielding for *debt*, and if a person capable of paying will notwithstanding, from fraudulent motives, voluntarily go to prison, it is an act of bankruptcy.

*Ex parte Burton
Vin. tit. Cred.
and Bank. 62.*

B. was arrested for 28 *l.* and though he had money sufficient to pay the debt, yet chose rather to go to prison, in order, as he declared, to force his creditors to come to a composition. The Lord Chancellor said, this is an act of bankruptcy within 1 *Jac. 1.* though without such *intent*, yielding himself to prison was no act of bankruptcy, unless he lay there two months; otherwise where the party procures himself to be arrested on a sham debt, for that by the statute of *Elizabeth* is immediately an act of bankruptcy.

*2 Black. Com.
478.*

*1 Com. Dig.
523.*

Willingly or fraudulently procuring his goods to be attached or sequestered, which is a plain and direct endeavour to disappoint his creditors of their security. But an attachment out of a court for default or laches is not an act of bankruptcy; nor if *A.* has a rectory impropriate, and the tithes are sequestered for not repairing the chancel, will he thereby become a bankrupt. The attachment here meant, and which the legislature had in view, is that sort of attachment by which suits are commenced, as in *London* and other towns where that species of process is used; therefore a fraudulent judgment and execution sued thereupon, was held not to be procuring goods to be attached within the words of this act.

*Clavey v. Haley.
Cowp. 427.*

*Harmen v.
Spottiswood,
ante. 68.*

Making any fraudulent grant or conveyance of his lands and tenements goods or chattels. A fraudulent grant, to come within the meaning of this statute, must

be by deed, therefore a fraudulent sale of goods, not by deed, is no act of bankruptcy in itself; but being a scheme concerted at the eve of a bankruptcy, to cheat innocent persons, in order to secure particular creditors, is such a fraud as shall render the sale void.

4 Burr. 2478.

A grant or conveyance fraudulent within the statute 13 Eliz. or 27 Eliz. is an act of bankruptcy.

1 Com. Dig. 525.

Hatfel v.

Simpson.

24 G. 3. infra.

A trader before he becomes a bankrupt may prefer one creditor to another, and may pay him his debt; or may make him a mortgage, with possession delivered, or may assign part of his effects; but a preference of one creditor to the rest, by conveying by deed all his effects to him, is a fraud upon the whole bankrupt law, and an act of bankruptcy.

1 Burr. 467.

Therefore when a trader by deed transferred and assigned all his estate and interest in certain premises, and also all his stock used and employed in the several trades he carried on, and all his changeable stock, debts, &c. to one *De Mattos*, for the purpose of securing him the re-payment of money he should advance; at the same time continuing himself in possession of every thing conveyed by the deed, having nothing of value but what was comprized therein.

Worsely v.

Demattos.

1 Burr. 467.

He was held by this conveyance of all his substance, though by way of security and for valuable consideration, to have committed an act of bankruptcy.

Whether a transaction be fair or fraudulent is often a question of law, it is the judgment of law upon facts and intents, but valid transactions as between the parties may be fraudulent by reason of covin, collusion, or confederacy to injure third persons.

2 Burr. 827.

Wilson v. Day.
2. Burr. 827.

sons. Of this nature was the case of *Worsley v. De Mattos*, and also *Wilson v. Day*, where *Lawson*, a trader being indebted to *Wilson*, and finding he could not stand his ground, assigned to *Wilson* every thing he had in the world to secure money really due to him, and which he was liable to pay on *Lawson's* account without liquidating the sum. No possession was delivered, but a letter of attorney was given to one *Betham*, (who was clerk to *Lawson*) to collect, receive, dispose, &c. But the goods continued in *Lawson's* house. No notice was given to the debtors of *Lawson*, till *Lawson* went off, which was in a few days after. The court observed that this deed was made to prefer *Wilson* to the bankrupt's other creditors. That it assigns all his property, and invests his own clerk with the management of his effects, instead of the commissioners. And they held him to be a bankrupt the moment he executed the deed.

Hatfel v. Simpson
Hil. T. 24. G.
3. 1784.

Nor will the case be different if the assignment is made to indemnify a surety, for the inconvenience and mischief arising from an undue preference is the same; therefore in a late case, where it appeared that the bankrupt had borrowed of Mr. *Bartlem* a sum of money, for the payment of which the defendant became surety in a bond. The surety was never called upon for payment till after the bankruptcy. The bankrupt conveyed to the defendant (for 500 years) a copyhold estate, and all his stock in trade, and all his personal estate whatsoever and wheresoever, and a nominal possession was given by delivery of a silver spoon. There was a proviso in the

the deed, that till the defendant was damnified he should not take actual possession.

Lord *Mansfield* said the only difficulty was to find a doubt after all the cases that had been decided. It has been said over and over again, that when a man conveys all his stock in trade, it is an act of bankruptcy, for it destroys his capacity of trading. He cannot afterwards sell any thing, for all belongs to another man. Another reason is, that it prevents creditors from recovering their debts.

And though it may be said this conveyance is within the statute of *Eliz.* and fraudulent, and will not therefore have effect, yet if it is so, it is an act of bankruptcy; for every fraudulent deed is an act of bankruptcy. His Lordship added, that this assignment not being to secure a present debt made no difference, it was to give a preference to the surety when he became a creditor.

He further observed, there was nothing stated in the case that shews the surety knew of the assignment, it seems as if the bankrupt had applied to his attorney to make this conveyance, who went too far and conveyed all; if he had conveyed only the copyhold, and that at the request of the surety, it would have been good.

A trader being arrested for debt, desired the bailiff to convey him to *Easto's*, a creditor, whom he requested to bail him—*Easto* refused—But the trader proposing to execute to him a bill of sale of all his effects for the debt for which he was arrested, and also for his debts to him, he consented to give a bond payable at the return of the writ; which the sheriff's officer accepted. On the same evening the

Butcher v. Easto
Doug. 232.

trader

Of the Act of Bankruptcy.

trader executed a bill of sale of all his goods and effects whatsoever to *East*, with power to enter and sell the same. The next day *East* was put into possession of the effects. The same day he committed an act of bankruptcy by keeping house, and soon after absconded.

Lord *Mansfield* said this was a stronger case than any of the former. The bill of sale was a fraud on all the bankrupt laws. It was a conveyance of all he had in the world. Was it possible for this man to carry on his business after the bill of sale had swept away all his stock and effects?

This conveyance was therefore held to be fraudulent and an act of bankruptcy.

An equal distribution among creditors who equally give a general personal credit to the bankrupt, is anxiously provided for ever since the act of 21. J. 1. c. 19. therefore when a bankrupt by deed conveys all his effects to trustees to pay all but one creditor, it is fraudulent and an act of bankruptcy. For where a trader made an assignment of all his effects, goods, stock in trade, and book debts, (except household goods, watches, plate, bills of exchange, inland bills, promissory notes, and cash then by him) to trustees in trust to pay themselves and all the rest of his creditors, except *Foord*. But the trustees declining to act under this assignment, he executed another, wherein the trustees were to pay themselves, and all the creditors mentioned in a schedule, (in which schedule *Foord* was not included) and in this second assignment a large parcel of ginger, as well as the things abovementioned were excepted.

Gayner's Case
1 Burr. 477.

Lord *Hardwicke* was clear, that the executing the deed was an act of bankruptcy, whereupon, the creditors mentioned in the schedule consented to waive all benefit or advantage under that assignment.

But though a conveyance by deed of all a bankrupt's effects, or so much of his stock in trade, as to disable him from being a trader, or all his household goods, is itself an act of bankruptcy; a conveyance of part is very different, that may be publick, fair and honest. As a trader may sell, so he may openly transfer many kinds of property by way of security. What assignment of part will or will not be fraudulent, must depend upon the particular circumstances of the case; but a colourable exception of a small part of his estate or effects will not prevent the deed being declared fraudulent, for the law will never suffer an evasion to prevail to take a case out of the general rule, which is so essential to justice. Therefore in *Gayner's* case, the exception in the deed of his household goods, watches, plate, bills of exchange, inland bills, promissory notes, and cash then by him, and a large parcel of ginger, was considered as colourable, and not suffered to prevail. The intention of the deed was fraudulent in giving an undue and illegal preference; and therefore could not be substantiated by such an exception.

So where *John Appleford*, (on the 5th of December, 1769,) in consideration of 300*l.* assigned to the plaintiff *Law*, two leasehold messuages, and all his stock in trade, by way of mortgage for 300*l.* and interest; but his household goods and debts, (which were very trifling) were not included in this assignment. The

Hooper v. Smith
1 Black. Rep.
441.

1. Burr. 478.

Gayner's Case
1. Burr. 477.

Law v. Skimmer
2. Black. Rep.
996.

Of the Act of Bankruptcy.

300 l. was not paid at the day, so that the mortgage became absolute.

On the 9th of *August*, 1771. the said *Appleford*, in consideration of the said 300 l. and 40 l. more, bargained and sold all his household goods to the said *Law*, by way of mortgage for the said 340 l. But his debts (which were of no value when the commission afterwards issued) were not included in this bill of sale. On the 17th of *September*, 1771. a commission of bankrupt issued against *Appleford*, and his goods and stock in trade were seized under the said commission; and the plaintiff permitted them to be seized and sold.

Appleford, till a short time before the commission issued, carried on his trade with credit.

The court said, this deed created an insolvency in the trader. It is an assignment of all his stock in trade, without which, he can carry on no business. It is of all his substance, except his household goods and debts, which alone were insufficient to discharge his incumbrances; and therefore made him insolvent. And if the deed be in itself an act of bankruptcy, the mortgage of the houses in the same deed is equally void and fraudulent.

Compton v.
Bedford
2. Black. Rep.
362.

And in another case, a trader finding his circumstances on the decline, but willing to give a preference to some favourite creditors, made an inventory of all his goods and stock in trade (some few particulars excepted, to the amount of about 100 l.) and at midnight made a bill of sale of them, in trust to pay those creditors their full debts, leaving debts to the amount of 900 l. unprovided for. Next

morning he absconded, and a commission of bankruptcy was afterwards taken out.

Lord Mansfield, at *Nisi Prius*, ruled this to be an act of bankruptcy. He told the jury the deed created an insolvency. The assignor must go off the next morning; else his possession will be colourable. The interest which is omitted in the assignment, is too minute to make a difference. The assignor has given up all his power of trading for the future. His very sign and sign-iron make part of the goods assigned. And another strong badge of fraud is the suspicious hour at which the transaction is done; being only twelve hours before he actually went off. He was therefore clearly of opinion the deed was fraudulent and void.

An assignment by deed of part of a trader's effects will be good, if made *bonâ fide*, and possession delivered; and indeed the not delivering possession being only evidence of fraud, may be explained by circumstances.

1. Burr. 484.

Leigh, a Turkey merchant, by deed dated 8th June, 1709, sold and conveyed particular goods, in the hands of his factors, to *Snelling* in trust to satisfy, in the first place, a debt of 1500*l.* due to *Snelling* himself; and then a debt of 1551*l.* and interest, due to *Morley*; and out of the residue to pay such of the bankrupt's creditors, as he, with *Morley's* consent, should direct.

Jacob v.
1. Burr. 478.

And, if there should be any surplus after the said *Snelling's* and *Morley's* debts were paid, and such sums for which they were bail or security for the said bankrupt, the same was to be paid to the said bankrupt.

G 2

The

Of the Act of Bankruptcy.

The trusts of this deed were immediately and openly carried into execution.

1. Burr. 478.

Upon a trial, the jury found he became a bankrupt on the 11th *February*, 1709. Lord *Mansfield*, observing upon this case in that of *Worsely v. Demattos*, says, there may be many reasons, why the deed was not found fraudulent upon the trial. It was executed on the 8th of *June*, of specific goods, and was immediately carried into execution. The act of bankruptcy was not till the *February* following, and no suggestion that in *June*, *Leigh* thought of committing an act of bankruptcy.

Unwin v. Oliver
1. Burr. 481.

So the assignment of several debts mentioned in a schedule annexed to the assignment to indemnify the sureties of the assignor was held good, he not becoming a bankrupt till a month afterwards, and at the time not having his bankruptcy in contemplation.

Small v. Oudley
2. P. W. 427.
1. Burr. 480.

But an assignment by deed of only part of a trader's effects to a fair creditor, will, notwithstanding, if done in contemplation of bankruptcy, itself become the very act. There is indeed a case which appears to contradict this position. Where *Norcott*, a goldsmith, after shutting up his shop, being indebted to several persons much beyond what he was able to pay; in contemplation of his bankruptcy, and to give a preference in payment to the plaintiff *Small*, who, upon a pressing occasion, transferred to him and his brother 500 l. *South Sea* stock, upon their engaging to transfer to him the like sum in the *South Sea* stock in a week or ten days at farthest, and giving a note for that purpose.

On the 29th of *September*, 1720. they made the assignment of their share in a wine partnership with

Oudley

Of the Act of Bankruptcy.

Oudley, amounting to 300*l.* carried on solely in his name, (in which they had two thirds, and *Oudley* one third) as a security for transferring 500*l.* *South Sea* stock and reciting the truth of the case.

They, at the same time, assigned two leasehold estates to *Small*, for the same purpose.

This assignment was made without the privity of the plaintiff *Small*. *Norcotts* never opened their shop again, but the very next day after making this assignment went off.

The Master of the Rolls said this assignment was good, and established it.

And it has been also ruled at *Nisi Prius*, that a trader assigning half his stock in trade to his mother, in part payment of a just debt, the very day on which he called his creditors together, was not an act of bankruptcy.

Hooper v. Smith
1 Black. Rep.
441.

But the authority of the case of *Small v. Oudley*, has been since much shaken by a decision in the court of Common Pleas, expressly upon the ground of an assignment of part in contemplation of bankruptcy, being in itself fraudulent, and an act of bankruptcy.

A trader, in consideration of a loan of 120*l.* without interest, being in insolvent circumstances, assigns one third part of all his effects to the lender, who is his brother. Possession of the goods was delivered instantly upon the assignment being made, and a clear act of ownership exercised by the brother, by his exposing them to sale, and carrying on the trade, nor had he the least knowledge or suspicion of the insolvency. Within two days after the

Linton v.
Bartlett
3. Will. 47.
Cowp. 124.

making the deed, the trader absconds, and he is declared a bankrupt.

The court said, if they should let this deed stand, they should tear up the whole bankrupt laws by the roots. It is a bill of sale made by a trader, at a time when he was insolvent, and plainly had an act of bankruptcy in contemplation; it is partial and unjust to all the other creditors. They therefore held the deed void.

Devon v. Watts,
Dougk. 86.

And agreeably to this decision, the assignment of a lease to some creditors to secure the payment of money due to them, and then in trust for the bankrupt, was held a fraud, and an act of bankruptcy; because done in immediate contemplation of becoming a bankrupt. It was a voluntary assignment, and though the motive might not perhaps be culpable, the transaction was contrary to the general policy of the law.

Procuring any protection except such as shall be lawfully protected by privilege of parliament.

Skinn, 21.

If any one be protected as the King's servant, it does not make him bankrupt.

By the 7th Ann, c. 12. s. 5. declaring the privilege of ambassadors and their train, it is enacted, That no merchant, or other trader whatsoever within the description of any of the statutes against bankrupts, shall have any benefit by that act.

Being arrested for debt, shall, after such arrest, lie in prison two months or more, upon that or any other arrest or detention in prison for debt.

3 Burr. 439.

The statute does not make the mere being arrested an act of bankruptcy. The most substantial trader is liable to be arrested; but the presumption of insolvency

solvency arises from his lying in prison two months, without being able to get bail; nor will this presumption be obviated by a mere formal bail put in for the purpose of changing from one custody to another. Where bail is really put in, the bankruptcy only relates to the time of the surrender; but when it is only formal bail, it will have relation to the first arrest. Therefore a man arrested in *Kent*, and brought up to *London* to be bailed, and immediately turned over to the King's Bench prison, where he lay two months, was held a bankrupt from the first arrest. — In a case where a man was arrested on the 2d of *May*, and on the 4th of *May* was charged in custody with that and another action, and laid in prison till the 2d *July* at the suit of the first plaintiff, when he was discharged out of custody as to him, and continued in prison at the suit of the second plaintiff till the 6th of *July*. The court held there was plainly an act of bankruptcy on the 4th of *May*, whatever dispute there might be as to its being a bankruptcy on the 2d.

Rose v. Green,
1 Burr. 437.

Coppendale v. Bridgen.
2 Burr. 313.

It has in one case been determined, that lying in prison two lunar months will make the party bankrupt from the time of the first arrest; and though the commission is taken out before the two months expired, yet he appearing to be bankrupt by relation to a time before the suing it out, it is sufficient.

Beaves Lex Mer. 489.

But where *A.* being arrested puts in bail, afterwards he surrenders in discharge of his bail, and is above two months in prison, he is a bankrupt only from the time of his surrender, not from the time of his arrest.

Bul. N. P. 38.

Billingshurst seems to be of opinion, that if a person lies in prison two months on an arrest upon a bond

Billingsh. 96.

Good. 26.

Hob. 86.

Rose v. Green.
1 Burr. 440.

before the day of payment, in order to oblige him to find sureties according to the custom of London, that this will be an act of bankruptcy; but Serjeant Gooding doubts this position, because, though it be *debitum in presenti*, and so a release of all debts, will bar it, yet it is not properly a debt within the words or intent of the statute, for that must be such a debt, for which a cause of action is given, and there can be no cause of action properly till the forfeiture, for the obligation is guided by the condition. But perhaps this question may never in fact become material; for though the custom is loosely stated in the 8th Rep. 126. (from whence *Billinghurst* cites it) "That the creditor may arrest the debtor before the day of payment to drive him to find sureties." It is differently alleged in *Hob.* where it is said, "If a debtor become *fugitive*, he may be arrested before the day of payment." Now, if the custom is truly stated, the debtor cannot become *fugitive* without committing another clear act of bankruptcy, viz. absenting himself from his house.

Being arrested for 100l. or more just debts shall escape out of prison. The act clearly intends such an escape as shews he means to run away, and thereby to defeat his creditors; it must be an escape against the will of the sheriff, for a man shall not be made a criminal where he has not the least criminal intention to disobey any law.

Therefore, a man who was arrested in Kent, and coming to town in custody of the sheriff's officer, was permitted by him to call at his attorney's house in the city, and from thence immediately carried to the Judges chambers, in obedience to a *Habeas Corpus*,

Of the Act of Bankruptcy.

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Corpus, was held not to be an escape in the sense of this act of parliament, but that he remained substantially in custody, notwithstanding his being carried into another county.

It is not an act of bankruptcy for a trader secretly to convey his goods out of his house, and conceal them, to prevent their being taken in execution. Nor to give money for notice when a writ should come into the sheriff's office; nor for a banker to refuse payment, if he appears, and keeps his shop open. So if a trader procures his goods fraudulently to be taken in execution, or makes a fraudulent sale of them, unless by deed, it is not an act of bankruptcy, though void against creditors.

An act of bankruptcy, if once plainly committed, can never be purged, even though the party continues to carry on a great trade; but if the act was doubtful, then circumstances may explain the intent of the first act, and shew it not to have been done with a view to defraud creditors. But if after a plain act of bankruptcy, a man pays off, and compounds with all his creditors, he becomes a new man.

1 *Ld. Raym.* 725.

Bull. N. P. 40.

7 *Mod.* 139.
Packenham v.
Bland. Sel.
Cases in Chan-
cery, 42.

Clavey v. Hayley.
Cowp. 427.

4 *Burr.* 2478.

1 *Salk.* 110.

Worsley v.
Demattos.

1 *Burr.* 484.

1 *Salk.* 110.

C H A P. V.

Of the declaring the Party Bankrupt, the
Seizure of his Effects, and Summons
for his Surrender.

THE 5 G. 2. c. 30. s. 43. enacts " That the
" commissioners shall not be capable of act-
" ing in the execution of any of the powers, and
" authorities given, and granted by any act of par-
" liament in force concerning bankrupts (unless
" it be the power of administering oaths to the com-
" missioners) until such time as they, respectively,
" shall have taken an oath to the effect following,
" that is to say,

" I A. B. do swear that I will, faithfully, impar-
" tially, and honestly, according to the best of my skill,
" and knowledge, execute the several powers and trusts,
" reposed in me, as a commissioner, in a commission of
" bankrupt against and that
" without favour or affection, prejudice or malice.
" So help me God."

" Which oath any two or more of the said com-
" missioners are hereby impowered and required to
" administer to each other in the same commission,
" named and authorised; and they the said commissi-
" oners are hereby required and impowered to enter,
" and keep a memorial or memorials thereof, signed
" by them respectively among the depositions, and
" other

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“ other proceedings on each respective commission,
“ that shall be issued forth by virtue of this act, or
“ any other act, or acts of parliament now in force,
“ concerning bankrupts.”

The 21 J. 1. c. 19. s. 8. “ reciting, that some
“ doubt is conceived, whether the commission-
“ ers, in case of resistance, have power by the
“ former laws, to break open, or cause to be
“ broken open the house or houses of such bank-
“ rupts, which, if they have not, the remedies by
“ the former laws given, will be to little effect:
“ Enacts, that in execution of the said commission,
“ it shall be lawful to, and for the said commission-
“ ers, or the greater part of them, or any other
“ person or officer by them, or the greater part of
“ them to be deputed and appointed by their warrant
“ or warrants, under their hands and seals, to break
“ open the house or houses, chambers, shops, ware-
“ houses, doors, trunks, or chests of the said bank-
“ rupt, where the said bankrupt or any of his goods or
“ estate, shall be reputed to be, and to seize upon, and
“ order the body, goods, chattels, ready money, and
“ other estate of such bankrupt, as by the said former
“ laws are limited and appointed, whether it be
“ by imprisonment of his body, or otherwise, as
“ to the said commissioners, or the greater part of
“ them shall be thought meet.”

By the 5 G. 2. c. 30. “ Every bankrupt, who
“ shall not within forty-two days, after notice in
“ writing to be left at the usual place of abode, of
“ such person, or personal notice, in case such
“ person be then in prison, and notice given in the
“ *London Gazette*, that such commission, is, or hath
“ been

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“ been issued, and of the time and place of a meet-
 “ ing of the commissioners therein named, or the
 “ major part of them, surrender himself to the
 “ said commissioners named in the said commission,
 “ or the major part of them, and sign or subscribe
 “ such surrender, and submit to be examined, from
 “ time to time, upon oath; or being of the people
 “ called *Quakers*, upon the solemn affirmation, by
 “ law appointed for such people, by and before such
 “ commissioners, and in all things conform to the
 “ several statutes already made, and now in force,
 “ concerning bankrupts, shall be deemed and ad-
 “ judged to be guilty of felony, and shall suffer as
 “ felons, without benefit of clergy, or the be-
 “ nefit of any statute made in relation to felons;
 “ and in such case, such felon’s goods and estate,
 “ shall go and be divided among the creditors seek-
 “ ing relief under such commission.”

“ Provided always, and be it enacted by the au-
 “ thority aforesaid, that the said commissioners, au-
 “ thorised as aforesaid, shall appoint within the said
 “ forty-two days, so appointed as aforesaid, for the
 “ bankrupt to surrender, and conform as aforesaid,
 “ not less than three several meetings, for the purposes
 “ aforesaid, the last of which shall be on the 42d. day
 “ hereby limited for such bankrupt’s appearance.”

“ Provided that it shall and may be lawful, to
 “ and for the Lord Chancellor, or Lord Keeper, or
 “ Commissioners, for the custody of the Great Seal,
 “ to enlarge the time, for such person surrendering
 “ himself, and disclosing and discovering his estate,
 “ and effects as aforesaid, as the Lord Chancel-
 “ lor, &c. shall think fit, not exceeding fifty days,

“ to

“ to be computed from the end of the said forty-
 “ two days, so as such order for enlarging the time
 “ be made by the said Lord Chancellor, &c. six
 “ days at least before the time, on which such person
 “ was to surrender himself, and make such discovery
 “ as aforesaid.”

5 G. 2. c. 30. s. 5. “ Every bankrupt having sur-
 “ rendered as aforesaid, shall, at all seasonable times,
 “ before the expiration of the said forty-two days,
 “ or such further time as shall be allowed to such
 “ bankrupt, to finish his examination, be at liberty
 “ to inspect his books, papers, and writings, in
 “ the presence of such assignee or assignees, or some
 “ person to be appointed by such assignee or assign-
 “ nees for that purpose, and to take, and bring with
 “ him for his assistance, such persons as he shall think
 “ fit, not exceeding two persons, at any one time,
 “ and to make out such extracts, and copies from
 “ thence, as he shall think fit, the better to enable
 “ him to make a full and true discovery, and dis-
 “ closure of his estate and effects. And in order
 “ thereto, the said bankrupt shall be free from all
 “ arrests, restraint, or imprisonment of any of his
 “ creditors, in coming to surrender, and from the
 “ actual surrender of such bankrupt, to the said
 “ commissioners, for, and during the said forty-two
 “ days, or such further time as shall be allowed to
 “ such bankrupt, for finishing his examination, as
 “ aforesaid, provided such bankrupt was not in
 “ custody at the time of such surrender, and submis-
 “ sion, to be examined.”

“ And in case such bankrupt shall be arrested for
 “ debts or on any escape warrant, coming to sur-
 “ render

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" render himself to the said commissioners, or after
 " his surrender, shall be so arrested, within the time
 " before mentioned, that then, on producing such
 " summons, or notice under the hands of the said
 " commissioners, or assignee or assignees, to the
 " officer, who shall arrest him, and making it appear
 " to such officer, that such notice or summons is
 " signed by the said commissioners, or the major
 " part of them, or such assignee or assignees, and
 " giving such officer a copy thereof, shall be im-
 " mediately discharged. And in case any officer
 " shall detain such bankrupt, (after he shall have
 " shewn such notice or summons to him, and made
 " it appear, it was signed as aforesaid,) in his cus-
 " tody, such officer shall forfeit and pay to such
 " bankrupt for his own use, the sum of five pounds
 " for every day, such officer shall detain such bank-
 " rupt, to be recovered by action of debt, in any
 " of his Majesty's courts of record at *Westminster*,
 " in the name of such bankrupt with full costs of
 " suit."

5 G. 2. c. 30. f. 14. " Upon certificate made
 " under the hands and seals of the commission-
 " ers, that such commission is issued and such
 " person proved before them to become bankrupt,
 " it shall and may be lawful, to and for all or any
 " of the justices of his Majesty's court of King's
 " Bench, or Common Pleas, or barons of the court
 " of Exchequer, and to, and for all and every the
 " justices of the peace within that part of the king-
 " dom of *Great Britain*, called *England*, the domi-
 " nion of *Wales*, and town of *Berwick upon Tweed*.
 " And

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“ And they are hereby impowered, and required,
“ upon application to them for that purpose made,
“ to grant their warrant under their hands and seals,
“ for the taking and apprehending such person, and
“ him to commit to the common gaol of the county,
“ where he shall be so apprehended and taken, there
“ to remain, until he be removed by order of the said
“ commissioners, or the major part of them, by
“ warrant under their hands and seals. And the
“ gaoler or keeper, to whose custody such person
“ shall be committed, is hereby required to take,
“ and receive such person into his custody; and
“ forthwith, to give notice to one or more of the
“ said commissioners in the said commission named,
“ of such person being in his custody; to the intent,
“ the said commissioners may send their warrant to
“ such gaoler or keeper (which they are hereby
“ impowered and required forthwith to send) for
“ the delivering such bankrupt, to the person or
“ persons named in such warrant, who shall be
“ thereby authorised, to convey, and bring such
“ person to the said commissioners, in order to such
“ examination, and discovering as aforesaid. And
“ the said commissioners are hereby likewise autho-
“ rised, and impowered, by such their warrant, or
“ any other warrant, to take, and seize any of the
“ goods, wares, merchandizes and effects, of such
“ bankrupt, (the necessary wearing apparel of such
“ bankrupt, or of his wife, or children only excepted)
“ and any of his books, papers, or writings, which
“ shall be then in the custody or possession of such
“ bankrupt, or of any other person, in any prison
“ or

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“or prisons whatsoever; any custom or usage to the contrary in any wise notwithstanding.”

When the commission is sealed, it is delivered to the commissioners at a private meeting, who, after having qualified themselves by taking the oath directed by the statute, proceed to examine the several particulars before described as requisites to make a bankrupt. Witnesses must be produced before the commissioners to prove the trading and the act of bankruptcy. And the petitioning creditor must himself attend to prove his own debt; indeed where he resides at a distance in the country, or any other particular circumstance should prevent his attendance, the commissioners, at their discretion, will permit him to make affidavit of his debt before a Master extraordinary to be filed in the secretary of Bankrupt's Office in *London*, and exhibited before them.

Though the evidence produced at the first meeting is all *ex parte*, yet it is both the practice and the duty of the commissioners to enquire minutely into the fairness of the petitioning creditor's debt, and the manner in which it arose, as well as the facts of trading and the act of bankruptcy.

If sufficient evidence is given to satisfy the minds of the commissioners (for they are not bound to believe all that is sworn) that the party is a bankrupt; they then proceed to declare him a bankrupt generally to prevent disputes about the time when he became such.

The commissioners cannot break open any but the bankrupt's house to search for his goods, &c.

When goods have been sent by the bankrupt on board a ship to be conveyed to his correspondents abroad,

Ex parte Simpson

1 Atk. 71.

Bromley v.

Goodere.

1 Atk. 78.

Ex parte Groome

1 Atk. 119.

De Golls v.

Ward.

Forrest. 243.

2 Show. 247.

abroad, the commissioners cannot seize and take them away without paying the freight; and should the party refuse obedience to the commissioners warrant of seizure, it should seem, from one case, that it was not such a contempt for which the Chancellor would order an attachment.

Therefore, where commissioners of bankrupt had issued a warrant to seize goods of the bankrupt on board two ships in *Topsam Bay*, which goods were consigned to persons in *Holland* who had not paid the bankrupt for them, the masters refused to deliver the goods, notwithstanding the warrant; which occasioned the commissioners coming to demand them, who were also refused.

Molloy 253.

Sir *Peter King* moved for an order upon the masters for their contempt.

Lord Chancellor, I at first greatly doubted whether I could make an order in aid and assistance of the warrant of the commissioners of bankrupt, the statute having vested a large power in them; besides the persons to whom the goods are consigned, would be indebted to the creditors of the bankrupt, which creditors may recover by the law of *Holland*.

Their refusing to deliver the goods upon the warrant is no contempt to this court, though the commissioners act under a commission under the broad seal. I remember the queen was applied to, to lay an embargo upon a ship in the like case, but denied; because an embargo would have affected other goods in the ship. The masters in this present case have some colour to detain the goods, for upon a delivery of them they may be disappointed of freight, and the assignees of the commission must stand in the

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same place as the bankrupt, and be subject to his contract.

However, an order was made upon the masters to deliver the goods, upon payment of the freight-money, and the masters to be indemnified by the creditors against a bill of lading, which was sent to the consignees.

Ex parte Titner.
3 Atk. 136.

But Lord *Hardwicke*, on the contrary, appears to have thought himself authorised to assist the power of the commissioners, for upon the commissioners preferring a petition, complaining of their messenger being opposed and turned out of possession, it appeared that *Haycock*, a silkman, entered into partnership with *Francis*, a dealer in coals, to be mutually partners in both trades. Some years afterwards they agreed to dissolve the partnership, and at the time of the dissolution, upon the balancing of accounts, *Francis* gave *Haycock* a release of all demands and took upon him the payment of debts due from the coal trade, and *Haycock* the payment of the debts from the silk trade, and the respective debts were assigned accordingly.

Haycock died, and soon after his death a commission of bankruptcy was taken out against *Francis*. And by virtue of a warrant of seizure, the messenger under the commission attempted to seize the effects of *Haycock* in the hands of his representative, who opposed the messenger and turned him out of possession.

Lord *Hardwicke* was of opinion, that by virtue of the release from *Francis* to *Haycock*, the whole property of the silk trade from the dissolution of the partnership vested in *Haycock*; and that the assignee could stand in no better light than *Francis* himself, who

who had relinquished all his claim, and therefore that the goods of *Haycock* ought not to have been seized at all under the commission against *Francis*.

But though the taking these goods by the messenger was illegal, yet the turning him out of possession by force could not be justified; for the owner of the goods ought to have asserted his right by a due course of law. However, the evidence on the part of the petitioner was *so slight* that it did not by any means support the charge, and *therefore* his lordship dismissed the petition with costs.

The 5 G. 2. c. 30. allows a bankrupt forty-two days to surrender in, but the sooner he surrenders the better for the creditors. Therefore to induce bankrupts to surrender, a privilege is held out to them by the same statute, that in coming to surrender they shall be free from arrest; and also after actual surrender for the space of forty-two days, or such further time as shall be allowed for finishing their last examination. But this is a particular privilege to enable them to surrender, and till actual surrender confined to the act of their going *with that view*; not a *general* privilege during the whole time which the act of parliament allows them to surrender in. Nevertheless if a bankrupt be abroad, and upon his return with an intention to surrender, is arrested on his landing before he can conveniently make his surrender, the privilege shall extend to him; but it must appear that he was actually going to surrender. For where one *Levi Solomon*, a bankrupt, came from *Holland* to *England* within the forty-two days, with intent to surrender himself upon the *forty-second day*, but finding that his time for surrendering was en-

Cowp. 157.

Ex parte DeFries
Bea. Lex. Met.
538.

Kenyon v.
Solomon.
Cowp. 156.

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larged to a further day, he then laid aside his design of surrendering himself upon the forty-second day, and did not mean to surrender until the *enlarged day*. In the intermediate time he was arrested by one of his creditors.

Upon a motion that he might be discharged out of custody, the court said, if a bankrupt be abroad as this man was, and upon his return with an intention to surrender, is arrested on his landing, or within a day or two after his arrival, before he can conveniently make his surrender, it would be too rigorous a construction of the statute, to say he shall not have a reasonable time in which to execute such intention; because in fact he is on his way to surrender. But here the bankrupt, instead of surrendering on his arrival, swears he had no intention of doing so till the last moment of the time allowed him for finishing his last examination. There is no pretence therefore for saying he is within the privilege of being free from arrests in coming to surrender; which must be confined like the cases of witnesses arrested in attending the court, to a reasonable time *eundi et redeundi*; and beyond that the privilege does not extend.

Nor will the act be any protection but against the suits of creditors; for Lord *Hardwicke* said, a bankrupt may be taken and surrendered by his bail within the time of privilege. Bail are no creditors till damnified, and therefore not within the description of the act, which plainly appears to be confined to an arrest, restraint, or imprisonment by his creditors.

Every person that is arrested in the court of King's Bench is by bill of *Middlesex*; and the bail-piece is, such a one defendant *traditur in ballium*

super

super cepi corpus &c. (naming the bail, their additions and places of abode) so that in the constant language of that court the bail are his gaolers; and it is upon this notion the bail have an authority to take the principal, and he may be arrested on a *Sunday*, for as he is only at liberty by the permission and indulgence of the bail, they may take him up at any time.

Therefore to say, that an act of parliament shall prevent a person, who has been so kind as to give the principal his liberty from taking him up in discharge of himself, would be very hard, especially as there is no sort of danger to the bankrupt of his being a felon, as the commissioners may examine him in gaol, and consequently it in no sort can be said to be in contradiction to the act of parliament. His lordship added, that he did not know that the bail's taking the principal coming to a court of justice to be examined as a witness, had ever been determined as a contempt of the court, provided they bring him to be examined by that court; but that he would not be understood to be bound by this opinion, or to have it cited in another place, which is the only proper place, the court of King's Bench (where the bankrupt was surrendered) and it is that court only that can discharge the process.

If by an innocent default of the bankrupt he has neglected to surrender himself on the day appointed, the Lord Chancellor may, upon petition, make an order that the commissioners be at liberty to appoint a new day for taking the examination.

The Lord Chancellor, upon an application of this kind by the assignees of a bankrupt, said the only case

Ex parte Smith
March 1, 1785.

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in which this was permitted was that of an innocent default of the bankrupt, and then the special circumstances of the case were always recited in the order, which was done with a view of preventing his being convicted for the offence, as far as this court could prevent it, although it most certainly would not alter the law. But in this case there is no excuse. And it would only be encouraging a felon without any reason. Therefore the petition was dismissed.

2 Atk, 222,

But though such an order will not of itself prevent a prosecution, the Lord Chancellor has power, in cases of peculiar hardship, to supersede the commission, and thereby put a stop to any proceedings against the bankrupt, and Lord *Macclesfield* did, in more instances than one, supersede a commission of bankruptcy, where the bankrupt had not surrendered himself within the forty-two days, and there did not appear any intention in the bankrupt of defrauding his creditors by not appearing within the time appointed, and where his absence proceeded from an ignorance of the consequence, or accident. However, it should seem that the same facts which would be sufficient to induce the Chancellor to exert his authority to impede the ordinary course of law, would also be a good defence to an indictment; for it cannot be supposed the legislature meant to inflict the penalty of *death*, upon an involuntary neglect to surrender within the forty-two days. Should the bankrupt be abroad at the time of the commission taken out, and not hear of it till the last day for his surrender is elapsed, it is impossible to imagine the act could be construed to extend to such a case; and

indeed

indeed Lord *Hardwicke* expresses his opinion, that particular circumstances might amount to a defence upon a criminal prosecution. For upon a petition by *Wood* that the commissioners under a commission against *Comerlan*, might admit him a creditor for 21 l. upon a note of hand, and that the clerk of the commission might be ordered to attend at the *Old Bailey*, with the proceedings under the commission, upon a prosecution of the bankrupt for felony, in not surrendering himself according to the directions of the act.

Ex parte Wood
1 Atk. 221.

The bankrupt was a foreigner, but lived several years in *England*, and went to *Holland* before the commission was taken out, and staid there till the forty-two days were expired for his surrendering himself; and about six weeks after the time expired returned to *England*.

Lord *Hardwicke* said, though such a prosecution may be carried on by a person who is not a creditor, yet by the words of the act of parliament it looks as if the legislature intended there should be a concurrence of the creditors under the commission.

Affidavits have been read of the assignees and creditors, whose debts amounted to 1800 l. and upwards, that they are very well satisfied with the account he has given them of the state of his affairs, and that they believe he could not have made a fuller discovery or disclosure of his estate and effects if he had appeared at the third sitting of the commissioners.

This is a penal law and a severe one, for it reaches to the life of the bankrupt, therefore a court of

Of declaring the Party Bankrupt, &c.

equity will not lend its aid to such a prosecution, by ordering the clerk of the commission to attend at the *Old Bailey* with the proceedings under the commission, but the petitioner must go on in such manner as the law prescribes, to prove him a bankrupt and a felon within the intent and meaning of the act of parliament. Therefore his Lordship would not grant that part of the petition which related to the intended prosecution of *Camerlan* the bankrupt: adding, that there was no occasion in this case to supersede the commission, as it was not probable the petitioner would be able upon the circumstances of the case to support such a prosecution.

The commissioners, if they have reason to apprehend the bankrupt is making away with and concealing his effects, or preparing to depart the kingdom, to avoid surrendering, may summon him to appear before them to be examined immediately.

And this was practised in a case where, after the three sittings at *Guildhall* had been advertised in the Gazette for the bankrupt to surrender, and discover his estate and effects, the commissioners in the intermediate time having met, and examined witnesses upon interrogatories, and finding upon such examination, that the bankrupt had been removing and concealing his effects, and fraudulently conveying away his real estate, in order to defraud his creditors, thought proper to summon him by their messenger to appear before them the next morning. And it appearing that he had been served with the summons and refused to attend. The commissioners

Ex parte
Lingood.
1. Atk. 240.

missioners in pursuance of a clause in the 5. G. 2. certified this fact to Mr. Justice *Chapple*, who committed him to *Newgate*; and upon the keeper of *Newgate*'s sending a written notice to the commissioners that he had *Lingood* in his custody, they immediately sent their own warrant to bring him before them, and upon his refusing to take the oath in order to his being examined, the commissioners re-committed him to *Newgate*.

Lingood petitioned the Lord Chancellor, suggesting that he had been illegally committed to *Newgate*, and praying that he might be discharged from his confinement.

Lord *Hardwicke* said, as to the legality of the commissioners certificate to Mr. Justice *Chapple*, and proceedings upon it, it is an entire new question, and quite a new case; and therefore at the first opening of it I had a great doubt, whether I could properly determine the legality of the commitment, as a *habeas corpus* might have been sued out, and have been decided by the Judges of the common law, which is the ready way. But I do remember a case of *John Ward*, before Lord Chancellor *King*, not unlike the present, where he determined a commitment by commissioners of bankrupt to be justifiable, after he had taken some time to consider of it.

I think therefore, the certificate which is made in this case is pursuant to the powers given to commissioners under the statutes of bankruptcy, for by the old acts, which considered him as a criminal and fraudulent person, commissioners had "full
" power

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“ power and authority to take by their discretions
 “ such order and direction with the body of a bank-
 “ rupt, wheresoever he may be had, either in his
 “ house, sanctuary, or elsewhere, as well by impri-
 “ sonment of his body, as also with all his lands,
 “ &c. and also with his money, goods, chattels,
 “ wares, merchandizes, and debts, whatsoever.”

The rigour of the law, indeed, as to his person is taken away, and yet the power of examining still remains; but though the severity of the old acts is removed, yet a greater punishment is inflicted for a bankrupt if he does not surrender; it is now made felony without benefit of clergy, but then he has till the last day to conform himself to this and the other acts.

The 5. G. 2. appoints three sittings at *Guildhall*, in the space of forty-two days for particular purposes; but would it not be a very great absurdity, if the bankrupt might make use of the forty-two days to embezzle his effects and to quit the kingdom; and that the commissioners, though apprized of his intention, should have no power to prevent it, by summoning him before them in the intermediate time, and committing him if he refuses to be examined?

It has been objected by the petitioners counsel, that the commissioners have made the certificate variant from the summons, for the latter is general for the bankrupt to attend, and the certificate mentions the cause for which they summoned him, namely, to examine him upon an embezzlement of his effects,

But

But there is no weight in this objection, for the commissioners were not under any necessity of mentioning the cause of summoning the bankrupt in their certificate; because the Judge upon their barely certifying that he refused to attend, is obliged to commit him.

As in this case the commissioners had full evidence of the bankrupt's intention to secrete his effects, and to make fraudulent assignments of them, they have done *rightly, wisely, and discreetly*, in the method they have taken to prevent it, by summoning the bankrupt, and committing him for disobeying their summons. I do not say this to encourage commissioners of bankrupt to use this power wantonly; but upon such circumstances as appear in the present case, I am of opinion it was very properly exercised, and the proviso which immediately follows the clause that relates to the certificate of the commissioners of bankrupt to the Judges, &c. in the 5. G. 2. makes it extremely clear, that the commissioners at their discretion may examine a bankrupt in the intermediate time, between his being declared a bankrupt and the sittings at *Guildhall*; for the words are—

“ Provided always, that if any such person so apprehended and taken, shall within the time or times allowed by this act for that purpose, submit to be examined, and in all things conform as if he had surrendered, as by this act such bankrupt is required, that then such person so submitting and conforming shall have and receive the benefit of this act, to all intents and purposes, as
“ if

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"if he had voluntarily come in and surrendered himself; any thing herein contained to the contrary thereof in any wise notwithstanding."

But though I have no doubt as to the construction of this act of parliament, yet I do not mean to preclude the bankrupt from his *habeas corpus*, which I shall leave him at full liberty to bring if he thinks proper.

C H A P. VI.

Of the Proof of Debts.

THE 1 J. 1. c. 15. f. 4. enacts, " That any of the creditors of a bankrupt, within four months after any commission shall be sued forth, and until distribution shall be made for the payment of the bankrupt's debts, may partake and join with the other creditors, that shall sue forth any such commission, for satisfaction and payment of their debts, the said creditors so coming in to contribute to the charges of the commission, and if the creditors come not in, within four months, then the commissioners to have power to distribute."

" But now by the 5 G. 2. c. 30. f. 25. every creditor of a bankrupt shall be at liberty to prove his debt under the commission, without paying any contribution or sum of money whatsoever for or on account of such debt, any law or statute to the contrary notwithstanding."

The 7 G. 1. c. 31. reciting " Whereas merchants and other traders in goods, have been very often obliged, and more especially of late years, to sell and dispose of their goods and merchandizes to such persons as have occasion for the same, upon trust or credit, and to take bills, bonds, promissory notes or other persons securities for their monies payable at the end of three, four, or six months, or other future days of payment; and the buyers of such goods becoming bankrupts, and commissions of bankruptcy being
" taken

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" taken out against them before the money upon
 " such bonds, notes or other securities became pay-
 " able, it hath been a question whether such per-
 " sons giving such credit on such securities, should
 " be let in to prove their debts, or be admitted to
 " have any dividend or other benefit by the
 " commission before such time as such securities
 " became payable, which hath been a great dis-
 " couragement to trade, and great prejudice to
 " credit within this realm." It therefore enacts,
 " That every person who shall give credit on such
 " securities as aforesaid, to any person who shall
 " become bankrupt upon a good and valuable con-
 " sideration *bonâ fide* for any sum of money or other
 " matter or thing whatsoever, which shall not be
 " due or payable at or before the time of such per-
 " sons becoming bankrupts, shall he admitted to
 " prove his bills, bonds, notes, or other securities,
 " promise or agreement for the same, in like man-
 " ner as if they were made payable presently, and
 " not at a future day; and shall be intitled
 " unto, and shall have and receive a proportion-
 " able part, share, and dividend of such bankrupt's
 " estate in proportion to the other creditors of
 " such bankrupts, deducting only thereout a rebate
 " of interest, and discounting such securities payable
 " at future times, after the rate of five pounds
 " *per centum per annum*, for what he shall so re-
 " ceive, to be computed from the actual payment
 " thereof to the time such debt, duty or sum of
 " money should or would have become due and
 " payable in and by such securities as aforesaid."

" And

“ And every person who shall become bankrupt,
 “ shall be discharged of and from all and every such
 “ bond, note, or other security as aforesaid, and
 “ shall have the benefit of the several statutes now
 “ in force against bankrupts, in like manner to all
 “ intents and purposes as if such sum of money
 “ had been due and payable before the time of his
 “ becoming bankrupt.”

The 19 G. 2. c. 32. s. 2. “ Whereas, merchants
 “ and other traders, frequently lend money on bot-
 “ tomree, or at *respondentia*, and in the course of
 “ their trade, frequently cause their ships or vessels,
 “ and the goods, and merchandizes loaded therein,
 “ to be insured; and where commissions of bank-
 “ ruptcy have issued against the obligor, in such
 “ bottomree or *respondentia* bond, or the under-writer
 “ or insurer, in such insurance, before the loss of
 “ the ship, or goods in such bond or policy of insu-
 “ rance mentioned hath happened, it hath been
 “ made a question, whether the obligee or obligees,
 “ in such bond, or the assured in such policy of in-
 “ surance, should be let in to prove their debts, or
 “ be admitted to have any benefit, or dividend under
 “ such commission, which may be a discouragement
 “ to trade. For remedy whereof, be it enacted,
 “ That the obligee, in any bottomree, or *respondentia*
 “ bond, and the assured in any policy of insurance
 “ made, and entered into, upon a good and valua-
 “ ble consideration, *bonâ fide*, shall be admitted to
 “ claim; and after the loss, or contingency shall
 “ have happened, to prove his debt and demands,
 “ in respect of such bond, or policy of insurance;
 “ in like manner, as if the loss or contingency had
 “ happened

“happened before the time of the issuing of the
 “commission of bankruptcy against such obligor
 “or insurer; and shall be intitled unto, and shall
 “have, and receive, a proportionable part, share,
 “and dividend of such bankrupt’s estate, in pro-
 “portion to the other creditors of such bankrupt,
 “in like manner, as if such loss or contingency had
 “happened before such commission issued. And every
 “person against whom any commission of bankrupt-
 “cy shall be awarded, shall be discharged of and
 “from the debt or debts owing by him, on every
 “such bond and policy of insurance as aforesaid,
 “and shall have the benefit of the several statutes
 “now in force against bankrupts, in like manner to
 “all intents and purposes, as if such loss or contin-
 “gency had happened, and the money due in res-
 “pect thereof had become payable, before the time
 “of the issuing out the commission.”

The 5 G. 2. c. 30. s. 26. directs “That the
 “commissioners shall admit the proof of any cre-
 “ditor’s debt that shall live remote from the place
 “of meeting, by affidavit, or being of the people
 “called *Quakers*, by solemn affirmation.”

Debts may be proved at any of the publick meet-
 ings appointed by the commissioners; the usual proof
 is the oath of the creditor, which if not objected to
 by the bankrupt himself or any of the creditors,
 is generally esteemed sufficient; but if any objection
 is raised, the demand must be further substantiated by
 evidence. For though the the creditor should make
 a positive oath of the debt, the commissioners, if they
 conceive themselves to have just grounds to doubt
 its fairness, ought to admit it only as a claim, for
 the

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the debt must be made out to the satisfaction of the commissioners, otherwise it may be rejected.

Ex parte Wood
1 Atk. 221.

In cases where the creditor lives in the country, or is abroad, the statute directs that his affidavit of the debt shall be received by the commissioners; but where circumstances make that impossible from his not being present to settle the accounts, or other good reason, proof may be admitted *aliunde*.

Therefore, on a petition by *Young* setting forth that the bankrupts were justly and truly indebted to him in the sum of 2160*l.* 15*s.* 10*d.* on the balance of accounts depending between them and the petitioner, but that the accounts of such dealings and transactions had never been finally adjusted; and that at a meeting at *Guildhall* on the 14th *February*, 1780. the petitioner by his agent, entered a claim for the said debt. That at the same meeting, a dividend of three shillings and sixpence in the pound was declared, and made, by the said commissioners, amongst all the creditors of the said bankrupt, who had proved or claimed their debts. That a meeting had been advertised in the *London Gazette*, for, and was intended to be had on the 14th *February* 1785. for the proof of debts, and for the purpose of having a further dividend declared by the said commissioners, amongst the creditors. That the petitioner did, for some time previous to the entering the said claim, for his said debt, reside, and had ever since resided, and did then reside, in the island of *Grenada*, and by means thereof, the petitioner had been prevented from having the accounts between the petitioner and the said bankrupts liquidated and adjusted, so as to enable him to prove his said debt.

Ex parte Young
19th March,
1785.

I

And

And from the circumstance of his residing in *Granada*, it would be impossible on his part, to make proof of his debt, or settle the accounts at the said proposed meeting.

It was therefore ordered, that the commissioners be at liberty to receive such proof of the debt claimed by the petitioner under the said commission, as he shall be advised to make, without requiring the oath of the petitioner, in proof of such debt; and that the petitioner be admitted a creditor under the said commission, for what shall be so proved to be due to him, and be paid a dividend or dividends, in respect thereof ratably, and in equal proportion with the rest of the said bankrupt's creditors. And that any meeting for making a dividend under the said commission, be postponed for the space of six weeks from the date of the order.

The aim of the legislature in all the statutes concerning bankrupts, being, that the creditors should have an equal proportion of the bankrupt's effects, creditors of every degree must come in equally; nor will the nature of their demands make any difference, unless they have obtained actual execution, or taken some pledge or security before an act of bankruptcy committed. For when a creditor comes to prove his debt, he is obliged to swear, whether he has a security or not; and if he has, and insists upon proving, he must deliver it up for the benefit of his creditors, unless it be a joint security from the bankrupt, and another person; in which case he may come in for his whole debt under the commission, without being compelled to deliver up the joint security, being intitled to recover what he

Ex parte Groome
2 Atk. 119.

Ex parte Bennet
2 Atk. 52.

can from the co-security, and take his dividend, upon the whole of his demand; upon the bankrupt's estate, provided he does not receive more than 20s. in the pound, in the whole.

Upon the same principle of equality among the creditors proving under the commission, the privilege of creditors to come in and prove their debts, and bankrupts to be discharged therefrom, is co-extensive and commensurate; therefore a man shall not prove a debt, and proceed in an action at law, at the same time. However, the court will not absolutely stop him from bringing an action; but put him to his election; and should he elect to proceed at law, he will still be allowed to prove his debt, for the purpose of assenting or dissenting to the certificate; which permission is absolutely requisite to make his remedy at law of any avail, for should the bankrupt procure his certificate, he will be thereby discharged from that action, as well as from all debts contracted before the act of bankruptcy.

If the creditor, before he proves his debt, proceeds at law against the bankrupt, he cannot be obliged to make his election till a dividend is declared. And where the creditor has already proceeded at law, he is not at liberty to come in, and prove his debt under the commission, without relinquishing his proceedings at law; unless by order from the Great Seal, for the purpose of giving his assent or dissent, to the certificate.

A creditor has been suffered to make his election of proceeding at law, against the bankrupt himself, after having proved his debt, and received two dividends, upon condition of refunding what he had

Ex parte Groom
1 Atk. 119.

Ex parte
Williamson
1 Atk. 81.
Ex parte Salkeld
1 P. W. 362.

Ex parte Capot
1 Atk. 220.

Ex parte Capot
1 Atk. 219.

received. But the case perhaps, might be different, if the creditor had in view, the charging a *third person*, as the security, or the bail of the bankrupt,

Aylett v.

Harford.

2 Black. Rep.

1317.

Therefore, where a creditor had proved his debt, and signed an agreement to permit the bankrupt to keep his house still open for trade, and to make him an annual allowance. The bankrupt, afterwards deserted his house, and absconded. Upon which the creditor proceeded to fix the bail, and served execution upon them. The court said, there were some instances, in which the court of Chancery permits a creditor to do certain acts, such as proving his debt, and voting for assignees, without binding him to come in under the commission, and renounce his legal remedy. But the creditor here, has gone much further, he has made his election, has acquiesced under the commission, and shall not, on a subsequent, unforeseen event, at the distance of a twelve month, desert the commission, and come upon the bail by surprize.

Ex parte Ward
1 Atk. 153.

Ex parte
Dorvilliers
1 Atk. 221.

The being chosen assignee, will not prevent the creditor from suing the bankrupt at law, if he has not proved his debt; for in that case, he can only be considered as a creditor at large, and even if he has proved his debt, and chosen himself assignee, he may still elect, to proceed at law, and be discharged as a creditor, under the commission.

Ex parte Lewes
3 Atk. 154.

But a petitioning creditor has not the same election as others, for if he was to elect to proceed at law, the commission must of course be superseded, which would affect those creditors who have proved debts under the commission; therefore he cannot keep the bankrupt in gaol.

And

And this incapacity of the petitioning creditor to keep the bankrupt in gaol, extends to other cases in which common creditors are not even put to their election; for if a creditor has demands upon the bankrupt of distinct natures, or in different rights, he is at liberty to prove one under the commission, and proceed at law for the recovery of the other. Therefore, where a bankrupt had borrowed 100 l. upon bond of a near relation, who had arrested him upon the bond and charged him in execution; and had another demand for a year's rent, which he offered to prove under the commission, though he would not waive his execution upon the bond debt. The commissioners refused to admit him to prove, unless he would waive his execution. But Lord *Hardwicke* said, though it was a hard case upon the bankrupt, as the debts were intirely distinct, he should be allowed to prove.

*Ex parte
Botteril
1 Atk. 309.*

So, on a petition *Ex parte Matthews*, it appeared that Mr. *Gary* had proved a debt under the commission in right of his wife, amounting to 5000 l. being her fortune under a marriage settlement, and also brought an action at law in his own right for a debt due to him for goods sold and delivered.

*Ex parte
Matthews
3 Atk. 317.*

The Lord Chancellor observed, the court would never suffer a creditor to split a demand, and prove part under the commission, and prosecute at the same time, a bankrupt for the remainder at law. But that in this case there are two remedies and different rights, and he even thought he might have done it, if the debts had been both in his own right. Suppose one debt had been due to Mr. *Gary* by bond, and another upon an account current, and he

had brought a bill here for the account, and an action at law upon the bond; these are two distinct things, and therefore the court will let him go on, both in law and equity.

If indeed, he was to bring a bill in equity for an account current, and an action at law for a particular item in that account, the court would, in that case, oblige the plaintiff to make an election,

Ex parte Ward
3 Atk. 153.

But where a petitioning creditor having founded his petition upon a debt arising from two notes of the bankrupt, arrested him upon a third distinct note; Lord *Hardwicke* allowed the bankrupt's petition for his discharge, because the petitioning creditor had determined his election by taking out the commission.

Ex parte Skip.
2 Vcz. 489.

A debt made void by statute ought not to be permitted to be proved, as a debt on an usurious contract; and though the rule of the Court of Chancery is upon a bill to be relieved against demands of usurious interest not to make void the whole debt, but to make the party pay what is really due; in a commission of bankruptcy the assignees have a right to insist that the whole is void, as an usurious contract. And unless the assignees and creditors submit to pay what is really due, the Lord Chancellor has not power to order it, and applications of this nature have been frequently refused.

Ex parte
Thompson
3 Atk. 125.

Accordingly where *A.* gave a note of hand without consideration, payable to *B.* two months from the date for 100*l.* *B.* indorses it over to *Thompson*, allowing a discount of a guinea and a half, being at the rate of 9*l.* per cent. When the note became due, *Thompson* took a joint bond from the drawer and

and indorser for the 100*l.* though he paid only 98*l.* 8*s.* 6*d.*

The commissioners had admitted him as a creditor under a commission against the drawer, but finding out this fact afterwards, they ordered his dividend to be stopped.

The Lord Chancellor, upon his petition would not direct him to be admitted to his dividend, but ordered an issue at law to try whether the bond was usurious.

But whatever might be the event of the issue directed by the court in this case, it should seem, if the contract was originally usurious it is void, and cannot be proved even in the hands of an innocent indorsee; for upon an action brought on such a note, the defendant's plea of usury would be a compleat bar.

Lowe v. Waller
Dougl. 716.

If the bankrupt's estate is in arrear for taxes, the collector when he comes to prove the debt, must produce his authority, that the commissioners may judge of the legality of it.

Corporations usually appoint a clerk or treasurer, who is the person to prove debts due to them; he must however produce his appointment under seal to the commissioners.

Every security that a creditor has for his debt, must be produced at the time of his proving, when the commissioners will mark them as having been exhibited.

In the same manner any person acting for another, must produce his authority to the commissioners, and they will mark them as exhibits.

3. Wils. 271.

In case of debts uncertain in point of liquidation, as between two merchants in balancing accounts, the matter rests upon a claim, to ascertain the sum that was due at the time of the bankruptcy. So where a creditor cannot ascertain his debt with certainty sufficient to enable him to swear to it, or is not able in other respects satisfactorily to substantiate it; or where the agent of a creditor cannot produce his authority, and in many other cases where there appears a probable foundation of a demand, though not sufficiently made out, it is usual for the commissioners to suffer a claim to be entered, but that will not entitle the party to a dividend, which he cannot receive without completely proving his debt. If a claim is not substantiated in reasonable time, the commissioners may strike it out, and they generally do so before a dividend is declared; unless sufficient reason is offered to them for prolonging the time, but the creditor is notwithstanding afterwards at liberty to prove his debt and receive his share upon any future dividends. However, in such cases where there has not been gross laches, the Lord Chancellor will make an order that such creditor shall be paid his proportion of the first dividend out of the money in the assignees hands, upon condition that it does not break in upon any former dividend.

C H A P. VII.

Of Debts payable at a future Day.

BEFORE the statute 7. G. 1. c. 31. debts which had not become due at the time of the bankruptcy could not have been proved, but by that statute the legislature put debts payable in future upon a day certain, on the same footing as debts actually due; however, as the preamble to that statute recites only "securities for the sale of goods and merchandize," it became a question whether securities given on any other account were within the act, the words of which are, "all and every person or persons who have or shall give credit on such securities as aforesaid, to any person who shall become bankrupt, upon a good and valuable consideration *bonâ fide* for any sum or sums of money, or other matter or thing." And it was held that it extends to all sorts of bonds for the payment of money, and that the words *such security* do not mean security for such a sort of debt but security by bonds, bills, notes, &c. For there is a legislative construction of this very act in the 5. G. 2. c. 30. s. 22. which, without conceiving a doubt, takes it for granted that the statute is not merely confined to securities for goods sold and delivered in the course of trade, but that it extends generally to all personal securities for a valuable consideration, where the time of payment is certain though postponed to a future day. It is true, the preamble

Ante 109.

2 Ld. Raym.

1549.

2 P. W. 396.

Ante 11

Cowp. 543.

Cowp. 543.

Mason v. Vere
2 Black. 1311.
Pattison v.
Bankes
Cowp. 540.

preamble is special and particular; therefore without express words in the enacting part, the operation of it must be confined to the preamble. But in a variety of cases strong words in the enacting part of a statute may extend it beyond the preamble. Therefore, in an action of debt upon bond, conditioned for the payment of an annuity; the defendant pleaded bankruptcy. Upon the bond being produced in evidence, the condition recited a lease for a term of years, from the bishop of *Carlisle* to *Hole* and others, which by assignment vested in the plaintiff's testator. The plaintiff's testator assigned this lease to the defendant for an annuity, and the condition of the bond was for the regular payment of the annuity during the residue of the term, and for the performance of covenants. At the time of the act of bankruptcy and the commission issued, the penalty was not forfeited, the annuity having been regularly paid up to that time. A verdict was given for the plaintiff, subject to the opinion of the court on this question: whether this was a security within the statute, all the payments being fixed at certain periods, though the bond itself was not given for goods sold and delivered, or for a debt contracted in the course of trade.

The court were of opinion that this was a debt within the statute.

2 P. W. 396.

A trader having contracted with the *East India* Company at one of their sales for the purchase of a parcel of goods, to be paid for at a future day, and before the day of payment he became a bankrupt. Lord King held it not to be within the statute, because

Of Debts payable at a future Day.

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cause the goods were not delivered, nor was the contract signed by the party.

A bill drawn before the bankruptcy, though not protested till after, is a debt that may be proved under the commission. Accordingly, one *Barrow*, in December and until January, 1728, drew bills upon merchants at *Bilboa* in *Spain*. After the drawing these bills *Barrow* became a bankrupt; and afterwards in February following, the bills were returned unaccepted and protested: whereupon the defendant was arrested, and being sued to execution moved to be discharged. It was resolved by the court, that *Barrow* contracted the debts the very instant when he drew the bills, which was before the act of bankruptcy; and that the non-acceptance or protest did not raise any debt, but was only notice to the party who held the bills, that the drawee would not pay the same, and was as much as to say, "I will not pay the bills, and you may go back to the drawer and he must pay you." The court held the debts to be *debita in presenti, solvenda in futuro* by the drawer,

Macarty v. Barrow
2 Stra. 949.
3 Will. 17.

So in a case where one *Joseph Prior* applied to the petitioner *Samuel Maydwell* to assist him with money.

Ex parte Maydwell
16. April, 1785.

The petitioner, on the 8th of November, 1784, agreed to lend his acceptance for 208*l.* if *Prior* could procure some other person to become security. *Prior* procured *Stevens*, who afterwards became bankrupt, to join him in giving a note which was expressed in the following terms. "The 8th November, 1784. We jointly and separately promise to pay to Mr. *Samuel Maydwell*, or order, on
" the

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"the 22d *January* next, 203*l.* and on the 18th of
" *January*, 95*l.* 15*s.*"

Maydwell accepted two bills dated the 16th and 29th of *October*, drawn by *Prior* upon him, each payable three months after date, one for 95*l.* 15*s.* the other for 203*l.*

On the 18th *December* a commission issued against *Prior*, and on the 10th *January* a commission also issued against *Stevens*. Both commissions were prior to the acceptances being due, or to the time when by their note of hand *Prior* and *Stevens* had promised to pay the money.

Upon petition by *Maydwell* that he might be admitted to prove the note under *Stevens*'s commission, the Lord Chancellor made the order accordingly.

C H A P. VIII.

Of Creditors by Marriage Articles.

THE bankrupt acts do not describe what kind of debts shall come under the commission; 3 Will. 374. however, it has generally been held that no debts can be proved but such as are demandable before the act of bankruptcy. The statute 4. and 5. Ann. c. 17. says, persons becoming bankrupts and conforming, shall be discharged from all debts due and owing at the time of the bankruptcy, and if sued for any such debt, may plead in general that *the cause of action* accrued before such time as he became a bankrupt. The *cause of action* means such a debt as is due and payable in all events. The creditor must swear to the sum due, and if he swears to more than is due, he will be guilty of perjury.

The distinction of debts payable *in futuro* on a day certain, and debts depending upon contingency, has given rise to frequent questions, whether the bankrupt's wife or her trustees should be admitted to prove the sum settled on her by marriage articles, under a commission against her husband.

Lord Hardwicke, on a petition *Ex parte Winchester*, stated the distinctions of the several cases respecting a wife's claim on her husband's estate. He observed the first head of cases, is where a bond is given by a husband to pay a sum of money in his life-time to trustees, to be laid out in trust for himself and his wife or children; and in case the husband survives,

Ex parte Winchester
1 Atk. 117.

Ex parte Winchester
Davies 535.

to

Of Creditors by Marriage Articles.

to the use of himself; if in this case the husband becomes a bankrupt, this being a debt due in his lifetime, and before the bankruptcy, the court will let in the trustees to prove such debt, according to the trusts.

A second head of cases is, where a person gives a covenant to pay to trustees a sum of money for the benefit of the wife or children after his death, and also a judgment by way of collateral security to such covenant, and afterwards becomes bankrupt; this being a debt at law, the court will permit the same to be proved under the commission.

The third, is where the father gives a bond to his intended son-in-law, on the marriage of his daughter to pay a sum of money after his death, and interest in the mean time, on particular days and times, and there is a breach of the condition of the bond, and the father becomes bankrupt; this is a legal debt not depending on a contingency, whether it is or is not to be paid—and therefore may be proved under a commission. Thus where *John Winchester* married *Elizabeth* the daughter of *John Grant*, and previous to his marriage, by an indenture dated the second of July, 1739, made between the said *John Winchester* on the one part, and *John Grant* the bankrupt, and *Elizabeth* the petitioner's wife of the other part, reciting the then intended marriage between the said *John Winchester* and *Elizabeth*, and that *John Grant* had before the execution of the indenture paid *Winchester* 500*l.* and by a bond dated the same day secured 1000*l.* more to be paid to *Winchester*, his executors, administrators, and assigns, within twelve months after the death of the survivor

Ex parte
Winchester
Davies 530.
2 Atk. 116.

of *John Grant* and *Barbara* his wife, together with interest for the same at 4l. per cent. per ann. by equal half-yearly payments, which 500l. then paid, and 1000l. secured to be paid, was declared to be in full for the wife's portion. It was agreed, and *Winchester* covenanted with *John Grant*, that he, his heirs, executors, or administrators, should within one month after his death, pay to *John Grant*, his executors, or administrators, the sum of 2000l. to be placed out at interest for the said *Winchester's* wife, and the issue of the marriage; and it was also agreed, that the 2000l. and the 1000l. when due, should be placed out at interest in the names of two trustees, in trust after the death of the survivor of the said *John Winchester* and his wife, to distribute the 3000l. among the children in such proportions as *Winchester* and his wife should direct, and for want of such direction, in trust to divide the same between such children equally, and in case there was no issue of the marriage, to pay 1000l. part of the 3000l. to such persons as the said *John Winchester's* wife should appoint, and for want of such appointment, to *Winchester*, his heirs, executors, or administrators.

The marriage was accordingly had between the said *John Winchester* and *Elizabeth Grant*, and there was issue of the marriage living three children. *John Grant* paid the interest of the bond home to the 25th of *December*, 1743. but not upon the exact days of *Christmas* and *Midsummer*, as was reserved in the bond. Davies 532.

In *April*, 1744, a commission of bankruptcy issued against *John Grant*, and he was thereon declared a bankrupt,

Of Creditors by Mortgage Articles.

bankrupt, and assignees chosen, but no dividend having been made of the bankrupt's estate, *Winchester* applied to the commissioners to be admitted a creditor for the said sum of 1000 *l.* but such sum not being payable till after the death of *John Grant* and *Barbara* his wife, the commissioners refused to admit him a creditor; and therefore he preferred his petition to be admitted a creditor for the principal sum of 1000 *l.* and that the dividend thereof might be laid out in the purchase of *South Sea* annuities for the benefit of him, his wife and children; and also prays to be admitted a creditor under the commission for 20 *l.* being the half year's interest due on the bond at *Midsummer* last.

Lord *Hardwicke* said, here was clearly a breach of the condition of this bond before the bankruptcy, for the half year's interest was become due at *Christmas*, but not paid till the 10th of *January*, and therefore not being paid at the day, the penalty was forfeited at law. He said, that it had been argued, that it turned upon the act for the amendment of the law the 4. and 5. *Ann. c. 16. s. 12.* "That when an action of debt is brought upon any bond, which hath a condition or defeasance to make void the same upon payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors, or administrators have, before the action brought, paid the principal and interest due, though such payment was not made strictly according to the condition or defeasance, yet it may be pleaded in bar, and shall be as effectual as if the money had been paid at the day and place according to the condition, and had been so pleaded."

Before

Before this act of parliament the bond was forfeited, if not paid at the day. But, said his lordship, *at a day or place certain*, are material words. This is a new defence, and a new plea given by the act of parliament, and therefore the common way of pleading is, that all interest was paid before the action brought. But this is not a bond with a defeasance for the payment of a lesser sum at a day certain, for here the principal is to be paid at an uncertain time; for it is to be paid within a twelvemonth after the death of the survivor of father and mother. It is not therefore, a bond within the description of the statute, nor did the act of parliament intend to comprehend bonds of this nature. For suppose a bond payable at instalments, the obligee gets judgment on the whole penalty, upon a breach of payment at the first instalment. Even a court of law would in such case act equitably; for upon the obligor's applying to the court there, and offering to pay the money due at the instalment, and agreeing to let the judgment stand as a security for the rest, they will relieve the party, on payment of the money then due, and costs.

His lordship, therefore ordered, that the petitioner Mr. *Winchester* be at liberty to prove his debt of 1000*l.* and that he be admitted a creditor under the commission for what he shall so prove, and be paid out of the bankrupt's estate a dividend in respect thereof, ratably with the other creditors of the bankrupt.

The fourth head of cases is, where a man covenants in consideration of a marriage portion paid him, for his heirs, executors, and administrators, to

22 parts v. 118 T
Winchester 118
Davies 536. 622

pay to trustees a sum of money after his decease, in case his wife survives him.

This case depending upon a contingency, whether it may or may not happen, is materially different from the other cases; because in the other cases there was a remedy at law before the commission issued.

Ex parte Caswell
3 P. W. 497.

The first case in point under this head is, where an husband trader, in consideration of marriage, and of a portion, gave a bond to his wife's trustee to leave the wife, if she survived him, 1000*l*. The obligor became a bankrupt; and it was objected that in Lord *Cotter*'s time, it had been ordered in case of a bond given on so valuable a consideration, that the money computed upon the distribution to be the share of the obligee in this bond, should be put out at interest, and the creditors to have such interest during the life of the husband the bankrupt, and if the husband should die, living the wife, the money to be paid to the wife; but if the wife should die in the lifetime of her husband, then the money to be paid to the creditors.

On the other hand, Lord *Macclesfield* was said to have doubted of this; and Lord Chancellor *King* conceived that no part of the bankrupt's estate should wait or be deferred from being distributed; especially that the distribution should not wait for a debt which was neither *debitum in presenti*, and never might be *debitum in futuro*, in regard the wife might die in the life of the husband.

Tully v. Sparks
2 Ld. Raym. 1546.

So, in a case in the King's Bench, it appeared that *William Donalson*, in his life time, by his bond dated the 6th of May, 1704, obliged himself, his heirs, ex-
ecutors

executors and administrators to *Tully and Rudsey* in the sum of 800 *l.* which bond was conditioned, that if the heirs, executors, or administrators of the said *Donalson* should pay to the said *Tully and Rudsey* 400 *l.* within two months after the death of the said *Donalson*, in case one *Martha Latimer* should marry the said *Donalson* and should happen to survive him, in trust for the benefit and behoof of the said *Martha*, her executors, administrators, or assigns, then the obligation should be void, otherwise to remain in full force.

Donalson was married to *Martha Latimer* and became a bankrupt, and obtained his certificate, and afterwards died, having made his will and appointed executors who did not pay the 400 *l.* Upon a question whether the trustees could have proved this bond under *Donalson's* commission; the whole court were of opinion, that it being uncertain whether this bond should ever become due or not, it depending upon two contingencies which had not both happened, at the time of the act of bankruptcy committed, it was impossible to make such abatement of 5 *l. per cent.* as the act of 7 *G. 1.* directs; and therefore that this bond was not within that act.

Conformably to this was the case of *Edward Cork*, who, by marriage articles in 1716, covenanted to pay trustees 4000 *l.* in case he should die, leaving a son and other children who should arrive to 21 equally, &c. *Cork* becomes a bankrupt and has a son and four other children all infants, who prefer their petition, praying that a sufficient part of the estate might be set apart in order to be divided when,

Edw. Cork was a bankrupt, and his estate was sold, &c. K 2

Lord

Ante. 109;

7 Vin. 72. pl. 74
Trin. 1734.

Lord Chancellor. It is uncertain whether any thing will ever become due; and before the 7 G. 1. c. 31. it was a question, whether bonds or promissory notes payable at a future day, though certain in all events, could be let in. And the difference now in such cases is to be adjusted by rebate of interest; but here, how is it possible to adjust the difference upon a contingency which may never happen?

*Ex parte King
Davies 254.*

And upon the same principle, where, by articles made on the 16th of Feb. 1731, between *James King* the elder, and the bankrupt *James King* the younger, *James Sutton* and *Anne King*, by the name of *Anne Sutton*, and *Robert Sutton*, and *John Complice*, reciting the intended marriage between *James King* the younger and *Anne King*. It was covenanted and agreed, that the said *James Sutton* should, within three months after the marriage, pay the said *James King* the younger 1000*l.* as the marriage portion of the said *Anne Sutton*; and if *James* and *Anne* should have issue living at the death of *James Sutton*, that then the heirs, executors, or administrators of *James Sutton* would pay to the said *James King* the younger, the further sum of 1000*l.* if he should be then living. But if *King* should die before the last 1000*l.* become payable to him, then the same should, in like manner, be paid to the said *Robert Sutton* and *John Complice*, in trust to place out the same at interest on such securities as the trustees with the said *Anne King* should approve, and should pay the interest to be made thereof to her, during her life, and after her decease, for the maintenance and education of the children of the said *James* and *Anne King*, till they should attain twenty-one, and then to be paid to them, in such

parts

parts and proportions as the said *James* and *Anne King* should appoint, and for default of such appointment to be divided equally between them. And in case they had no issue, then to such person or persons as the said *James King* the younger should, by deed or will give or appoint the same unto, and in default thereof the same was to be paid to the executors or administrators of the said *James King*.

By the same articles *James King* the younger covenanted that if he received the said 1000 *l.* payable after *James Sutton's* death, according to such covenant, that then the heirs, executors, or administrators of the said *James King* the younger should, within three months after his decease, pay to the said *John Complice* and *Robert Sutton, &c.* 1000 *l.* to be by them employed in such manner and form, and for such uses, intents and purposes as were before expressed and limited, touching the 1000 *l.* payable after the death of *James Sutton*.

In *January, 1739*, *James Sutton* the father died; and *James* and *Anne King* having issue a daughter, named *Anne*, who was then living, *James King* became intitled to the 1000 *l.* after *James Sutton's* death, and the executors of *Sutton* accordingly paid him the same; and he gave them a discharge from the same.

James King became a bankrupt, whereupon *Anne King* petitioned to be allowed the 1000 *l.* so paid to her husband *James King*, by *Sutton's* executors, in the nature of a debt under the commission, by virtue of the covenant in the articles, and that a part of *King's* estate, in proportion to what is paid to his other creditors, might be paid to the trustees, to be

disposed in such manner as might answer the intention of the said articles, and that the money to be received by virtue of such dividend, might be placed out at interest, in such manner as that she might receive the interest thereof during her life, in case she survived her husband, and that the principal monies to be received for such dividends, might go and be paid to such child or children of her by *James King*, as should happen to be living at the death of the survivor of them, in case there should be any such issue, as was directed by the articles.

Lord *Hardwicke* was of opinion that he could not relieve the petitioner *Anna King*; and therefore dismissed the petition.

Ex parte Groome
3 Atk. 115.
Davies 524.

Articles of agreement were entered into between *John Grier*, *Ruth Groome*, spinster, and *Thomas Groome*, *Thomas Symonds*, and *John Sharpe*, reciting that a marriage was intended to be had between the said *Ruth Groome* and the said *John Grier*. And in consideration of 600 l. to him paid by the said *Thomas Groome*, as the marriage portion of the said *Ruth Groome* his daughter, and for the making some provision support and maintenance for the said *Ruth Groome* and her issue, in case the said intended marriage should take effect, and she should survive the said *John Grier*; the said *John Grier* did, for his heirs, executors, and administrators, covenant, promise, and agree to and with the said *Thomas Groome*, *Thomas Symonds*, and *John Sharpe*, and the survivor of them, that the heirs, executors, and administrators of the said *John Grier* would, within three months after the death of the said *John Grier*, well and truly pay, or cause to be paid unto the said *Thomas Groome*,
Thomas

Of Creditors by Marriage Articles.

115

Thomas Symonds and *John Sharpe* the sum of 600*l.* to be placed out upon security, in trust that they should, when they had received the said sum of 600*l.* as soon as they could conveniently afterwards, place out in their names, the said sum of 600*l.* And from time to time, as they should see occasion, and think proper, call in and receive the said monies, and place the same out upon other securities, upon trust that the interest and proceeds that should arise by the said 600*l.* or any part thereof received by the said trustees, should be paid to the said *Ruth Groome* during her natural life, for her own use, or to such person as she should, by deed or writing under her hand and seal, testified by two credible witnesses direct or appoint. And after the death of the said *Ruth Groome*, in case there should be issue of her body, in trust for such issue, in such manner as in the said articles are mentioned; and in default of such issue, or in case the said *Ruth Groome* should die, leaving issue, and all such issue should die within age, and without issue, and unmarried, then 300*l.* part of the said 600*l.* and all interest which should be then due for the same, should be paid unto the executors or administrators of the said *John Grier*; and the 300*l.* residue thereof, unto the said *Thomas Groome*, his executors, or administrators.

The marriage took effect, and afterwards a commission of bankruptcy issued against *Grier*, who died before any dividend made.

Thomas Groome and the other trustees attempted to prove the 600*l.* as a debt before the commissioners, who

Of Creditors by Marriage Articles.

who refused to admit it, and therefore they petitioned the Chancellor.

The counsel for the creditors admitted, that if a judgment had been given with a defeasance, or a bond with a penalty for payment of a sum of money at a certain time, and such penalty had been forfeited, this would have been a debt at law, and proveable under the commission; but this was a debt only resting in covenant, and that in this case there was no forfeiture of the penalty, such debt depending on a contingency, and was not provided for to be proved by any clause in the acts relating to bankrupts; and therefore the trustees (though the contingency had happened before the dividend was made) had no right to prove the debt.

Lord Hardwick concurred with the reasons offered by the creditor's counsel, and expressed his opinion, that as this was not a debt that happened at the time of the act of bankruptcy committed, that it could not be proved under this commission, there being no drawing a line between the one and the other. That the case of *Tully v. Sparks* which he had fully considered was a clear authority in this point; and that the acts relating to bankrupts, had not made a sufficient provision for the relief of such sort of creditors; therefore he dismissed the petition.

There have been also two other cases in which the principles above laid down as to contingent debts have been admitted, though from circumstances of peculiar hardship, the court has been averse to decide against the claim of the wife.

As where *Edward Greenaway*, previous to his marriage with *Elizabeth Greenaway*, gave his bond

to

to her father, in the penalty of 600*l.* in trust, that if the marriage should take effect, and she should survive *Edward Greenaway*, and if he should, before his death, by will, or otherwise, give or leave the petitioner 300*l.* in goods, or other personal or real estate, so as the same should be paid by his executors or assigns immediately after his death, to the said *Elizabeth*, without any claim by any person or persons whatsoever, then the bond was to be void.

The marriage took place between *Edward Greenaway* and *Elizabeth*, and a commission of bankruptcy issued against *Edward Greenaway*, and he died insolvent, before any distribution of his estate, and *Elizabeth Greenaway* proved the bond before the commissioners, but the assignees refused to make any dividend to her. She therefore petitioned, that as her husband made no provision for her, in his life-time, she might be let in to receive her dividend out of the bankrupt's estate and effects, in equal degree with the other creditors. Lord *Hardwicke* said, the question was, whether this is not a debt become due before the estate is distributed, and that it would be the hardest case in the world, if such a person should not be admitted a creditor, before the estate is divided away. The penalty in an obligation is *debitum in presenti*, and the condition only suspends it, so that it is looked upon as a debt, from the time of the execution of the bond. His Lordship ordered it to stand over, to give an opportunity to compromise, and accordingly the creditors agreed to let in the wife of the bankrupt for 150*l.* half of the bond debt only, in which she acquiesced. Whereupon the Lord Chancellor said, he was very glad it was promised,

Of Creditors by Marriage Articles.

promised, for it was a matter attended with great difficulties, and there had not been one case since *Tully v. Sparkes*, but what had been determined, expressly against a contingent interest. He added that the distinction taken in equity, has been between a trust for the wife, and a bond absolutely given to the wife herself, before marriage, upon a contingency of her surviving the husband.

Ex parte
Michell
1 Atk. 120.

So where *Benjamin Michell*, in pursuance of articles before his marriage with *Elizabeth Michell*, did execute a bond to *Thomas Michell* and *William Rous*, the trustees under the articles, in the penalty of 1000*l.* conditioned to be void, if the heirs, &c. of *Benjamin Michell*, should pay to *Thomas Michell* and *William Rous* 500*l.* within three months next after the death of *Benjamin Michell*, for the use of the petitioner, in case she should outlive her husband, or in case she should not survive him to the use of her child or children, if any. A commission of bankruptcy issued against *Benjamin Michell*, who died some time after, and a dividend was declared of nine shillings in the pound. The commissioners would not admit the wife a creditor without an order of the court.

She petitioned to be admitted a creditor, and to be paid out of the money remaining in the assignees hands, a dividend in proportion to what hath been already paid to other creditors.

The assignees being served with notice, and no counsel attending for them, the Lord Chancellor directed the petitioner to be admitted a creditor, and to receive her dividend, *it not being opposed*. His Lordship declared, that if there had been a judgment,

ment, he should have thought it would have made it an immediate debt, and she would have been intitled to come in as a claimant before the death of the husband, and the assignees must then have retained sufficient in their hands on a dividend day, to answer a proportionable dividend to the petitioner, when the event happened.

After the Lord Chancellor had pronounced the order he had some doubt, and therefore would not suffer the secretary to draw up the order, though not defended, and declared in this case he was very unwilling to make a precedent, though this appeared a very hard case. He said, the only difference between *Groome's* case and this, is that *Groome's* case was upon a contract, but this upon bond, and unless it can be made *debitum in presenti, solvendum in futuro*, which would be difficult to do, the petitioner would not be intitled to prove it. In those cases where he had let in such creditors, a judgment was given at the time, which is an immediate debt at law, and suspended only in equity upon the defeasance. His Lordship ordered it to stand over till next day of petitions, and in the mean time recommended it to the assignees to compromise with the petitioner.

And in a still later case, it is said to be settled, that on a contingent provision for a wife, she cannot be admitted as a creditor.

Anonymous
22 Jan. 1759.
3 Will. 271.

But notwithstanding the general rule seems to be thus established, the case will be different, if the assignees are obliged to come into equity to compel the performance of a trust; for then as they require equity, they shall be obliged to do equity, and secure

1 Atk. 114.

Holland v.
Calliford
Vern. 662.

cure the settlement to the wife. Thus where one *Blanchard*, a cabinet maker, married the sister of *Calliford*, who had 500*l.* portion secured by land. *Blanchard* on his marriage, gives a bond to leave his intended wife, if she survived him, 500*l.* or a third of his estate, at her election.

Blanchard became a bankrupt. A bill was brought by the assignees to have the 500*l.* raised by a sale, and decreed accordingly; but with this, that the wife should come in as a creditor, upon the 500*l.* bond, and what should be paid in respect thereof, to be put out at interest, and received by the creditors, during the life of the husband; and if the wife survived, then the money to be paid to her.

CHAP. IX.

Of Contingent Debts.

CONTINGENT debts are not permitted to be proved under a commission of bankrupt, unless the contingency took effect before an act of bankruptcy committed, because the debt ought to be due, and payable before the bankruptcy; therefore, where a note of hand was given on the 1st of *January* payable one month after date, and the drawer became a bankrupt on the 10th *January*; it was held, that the creditor could not come in for a distribution, for though it was *debitum in præfenti*, the cause of action did not accrue, until after the act of bankruptcy. But this being found extremely inconvenient, the statute, 7. G. 1. alters the law in this particular, but that statute only extends to cases where the debt is payable at a future day *certain*. Contingent debts, are therefore left unprovided for, except bottomree and *respondentia* bonds, and policies of insurance, the holders of which are relieved by the 19 G. 2. c. 32. s. 2. which admits them to make a claim, and to prove when the contingency takes effect.

Contingent debts are said not to be included in the statute 7. G. 1. because, it being uncertain, whether they shall ever become due or not, it is impossible to make such abatement of 5*l. per cent.* as the act directs, and therefore they cannot be within it. And this doctrine has been constantly followed, and admitted, as appears by the cases alluded to, in the former

Callowell v.
Clutterbuck
cited 2 Stra.
867.

Ante. 109.

2 Lord Raym.
1549.

Ante. 111.

Tully v. Sparks.

Ex parte Caswell
2 P. W. 497.

Ex parte Groome
2 Atk. 118.

3 Will. 270.
Crookshank v.
Thompson.
2 Stra. 1160.

former chapter. However, Lord Chancellor *King* declared that though a debt be contingent, when the obligor becomes a bankrupt, yet if the contingency happens before the distribution made, such contingent creditor may come in for his debt; or if the contingency happened before a second dividend, the creditor may come in for his proportion thereof. But this has been since over-ruled, and the contray position established, for Lord *Hardwicke* said, that Lord *King's* was barely an *obiter* opinion, and that Lord *Talbot* afterwards doubted of Lord *King's* assertion, and that he himself had differed from him intirely on a former occasion, and that he still adhered to his opinion. But though the principle, that contingent creditors cannot be admitted to prove under a commission, where the act of bankruptcy was prior to the happening of the contingency, is clear and indisputable; many questions have arisen, as to what debts shall be said to be contingent within the meaning of the rule.

One having only a cause of action, cannot come in, and prove it as a debt; because the damages that may be given are considered merely as contingent. Therefore if *A.* has a bond of indemnity from *B.* and the condition be broken, and afterwards *B.* becomes bankrupt, before *A.* has been sued or damnified, though *A.* had a good cause of action against *B.* before the act of bankruptcy, yet as he had not been damnified by paying any certain sum of money, by reason of *B's* breach of the condition, *A.* cannot possibly swear to any debt due, and owing from *B.* at the time of the act of bankruptcy.

So

So, if a lessee ploughs up meadow ground, for which he is bound to pay the lessor a certain sum of money, as a penalty, that penalty cannot be proved as a debt under the commission: nor if a man be bound in an obligation, in a certain sum to perform covenants, and the obligor, before he becomes a bankrupt, breaks those covenants, the obligee cannot prove this as a debt under the commission. If a bond by a principal and surety, has not been forfeited, before the surety became bankrupt, the debt cannot be proved under his commission, but he may be sued upon it notwithstanding his certificate.

Therefore, where a commission of bankruptcy issued against the defendant, on the 5th of September 1776. who afterwards obtained his certificate, which was allowed by the Chancellor on the 1st of May, 1777. the bankrupt having entered into a joint and several bond, with a condition that the bond should be void, if *James Sage Thomas Lawrence*, (the principal) his executors and administrators should pay the interest, and if the said *James Sage Thomas Lawrence*, his executors or administrators should, within twenty days after the expiration of five years, in case he should so long live, and enjoy the benefit of the loan, repay, or cause to be repaid, to the chamberlain of the city of London, for the time being, the principal sum borrowed. Other conditions were recited, but it was admitted that the bond had not been forfeited by the breach of any of the stipulations in the condition, till after the defendant became bankrupt, viz. not till the 7th of July, 1777.

Lord Mansfield delivered the unanimous opinion of the court, that this was not a debt to be paid by the

3 Will. 270.

Alfop v. Price
Doug. 155.

the bankrupt in all events, but depended on the acts of the principal, *viz.* whether he did or did not comply with the stipulations in the condition of the bond, and therefore that the certificate did not bar the action.

In case of bonds given to secure annuities, if the arrears have been regularly paid at the day, the purchaser of the annuity cannot prove under the commission, but if the bond has been forfeited by a failure of punctual payment, it becomes due at law, and the equitable redemption of that forfeiture, by payment of the arrears and the growing annuity is the subject of valuation; and the debt, when appretiated, may be proved under the commission.

Perkins v.
Kempland
2 Black. 1106.

Thus in a case where one *Kempland* on the 18th *January*, 1770. joined with Sir *William Desse*, in consideration of 240*l.* (for which *Kempland* alone signed the receipt on the back of the bond, though he alledged, he acted only for *Desse*, who being a banker, did not chuse to appear to be the borrower) gave the plaintiff a bond of 480*l.* to secure an annuity to *Perkins* of 40*l.* payable half yearly for *Kempland's* life, which *Desse* paid up regularly to the 18th *January*, 1775.

On the 18th of *March* 1773, a commission of bankrupt issued against *Kempland*. The plaintiff said he should look upon *Desse* as his paymaster, and did not prove any part of his demand under the commission, though a quarter's annuity became due on the 18th *April*, 1773, and *Kempland's* certificate was allowed on the 15th *July*, 1773.

In *June* 1775, Sir *William Desse* became a bankrupt; and the plaintiff did not prove his demand under

under that commission, though a quarter's annuity became due on the 18th of *April*, 1775. *Desse* has since obtained his certificate. And on the 27th *May*, 1776. *Kempland* was arrested in execution for a year's annuity, due the 18th *January* 1776. and paid the money in question to be discharged.

The court were of opinion, that, as the bond was not forfeited at the time the commission issued, there was no debt then due in law; but it was a mere contingency which might or might not become a debt *in futuro*. All the cases in Chancery are where the bond is actually forfeited; to redeem which forfeiture, it is allowed that a value be set on the annuity. But neither there, nor at law, can the debtor be protected for a debt that arises after the date of the commission; and it was so resolved in *Young v. Hockley*, *C. B. Mich.* 13 G. 3. And therefore they discharged the rule that had been obtained, for the sheriff to shew cause, why he should not return the money paid to him by the defendant, to procure his discharge. However, upon a subsequent application to the court, the former state of facts appeared erroneous, the bond having been frequently forfeited, by non-payment of the annuity when due, upon which the court said, the defendant had made a new case, which was as clearly for him, as the former was against him.

The receiving payment of the arrears of an annuity after the forfeiture has once taken place will not be such a waiver of the forfeiture as to take the case out of the general rule.

For, upon a question of this nature, it appeared that a quarter's annuity became due on the 25th

L

December,

Wyllie v.
Wilkes
Dougl. 501.

Of Contingent Debts.

December, 1776. that the arrears due on that day were paid on the 18th *March, 1777*; and then the defendant became a bankrupt, and a commission issued against him, under which he obtained his certificate.

Lord *Mansfield* delivered the opinion of the court, as follows. The question is, whether there was any debt due at the time of the bankruptcy; and as between the parties, on general principles, when a forfeiture lies in compensation and the person intitled to the compensation, receives satisfaction after the forfeiture, he can never resort back to the penalty. Take the common case of rent. If payment is made after the day, you can never recur to the forfeiture. All forfeitures are odious, if carried beyond their true intent. Besides, (I here speak my own opinion) in questions between the parties, I should exceedingly incline to say, that annuity-bonds are within the reason, though not the letter of the act of the 4 and 5 *Queen Anne*; an act made to remove the absurdity which *Sir Thomas More* unsuccessfully attempted to persuade the judges to remedy, in the reign of *Hen. 8.* for he summoned them to a conference concerning the granting relief at law, after the forfeiture of bonds, upon payment of principal, interest and costs; and when they said they could not relieve against the penalty, he swore, by the body of God, he would grant an injunction. This is a remedial law, and, if a case is within the mischief, the remedy ought to extend to it. I should have thought therefore, that payment after the day, might be pleaded to an action on an annuity-bond. In the case of *Webster* against *Bannister*, as far as it was

was necessary to consider the point, we were all inclined to think, that even without an express agreement, to give farther time, the receipt of the money after the day would have been sufficient. But insolvent acts differ from the bankrupt laws; there is no authority, no commissioners under the insolvent acts to set a value upon the annuity. The present case arises upon a bankruptcy. It is to be lamented, that so large a class of creditors, as annuitants are, should be left without any express provision in the bankrupt laws. It is hard upon them, that they should be excluded from proving under the commission, (when perhaps the other creditors may receive 15 shillings in the pound under it,) and should be left only to a fruitless remedy against the bankrupt. It is also hard upon an honest bankrupt, who has given up his all to his creditors, that he should still continue answerable for debts which he has nothing to satisfy. This is a great defect and chasm. It is a pity that the legislature should be silent, and should force the courts, in order to attain the ends of justice, to invent legal subtleties, which do not come up to the common understanding of mankind. That has been done in the case of annuities. The court of Chancery has laid hold of this subtlety. It has said, the penalty is the debt, if the forfeiture has been one incurred; and you may have a value set upon your annuity, and come in as a creditor, under the commission. If it is objected, that the forfeiture was waived, the court answers; no matter for that it, it shall be still in force, because it is for the benefit both of the creditor and the bankrupt, that it should be so. This has been settled,

and we all adhere to the determination, as far as this case goes, as a legal subtlety, established for good purposes, but not to be drawn into principle or argument in other cases. It has been the foundation of practice in the court of Chancery, and has received a solemn consideration in the court of Common Pleas, in the case of *Perkins v. Kemp-land*, which is an authority directly in point. That court thought annuity-bonds were not within the statute of Queen Anne, and for that part of their opinion, relied on what Lord Hardwicke said in a case, *Ex parte Winchester*, viz. that the words, "At a day or place certain," are material words in the statute, and that bonds not given for the payment of a lesser sum, at a day or place certain, are not within it. I hardly think he would have considered those words as sufficient to take a case out of the statute which is clearly within the reason and meaning of it, if it had not been to give the party the advantage of the equitable subtlety, by which he was enabled to prove under the commission. We consider ourselves as bound by the authorities, as far as the present case goes, but no farther.

Fletcher v.
Bathurst
7 Vin. 71. pl.
4.

4 Bur, 2446.

Cottrell v.
Hooke Dougl.
93.

However, if the annuity is secured by a deed of covenant, the bankruptcy and certificate will be then no bar to an action for arrears accruing since the bankruptcy; nor will the case be altered if a bond is likewise given as an additional security, and forfeited for non-payment before the bankruptcy. As in an action of covenant, the plaintiff declared, that in consideration of 240 l. paid by him to the defendant, the defendant by an indenture, bearing date the 7th of July, 1767, had covenanted that he would pay the plaintiff

plaintiff an annuity during his life of 40*l.* a-year, at four quarterly payments, and that 60*l.* of the annuity became in arrear on the 7th of *April*, 1778. The defendant prayed *oyer* of the deed of covenant, which was set forth, and by which, after reciting, that for the better securing the annuity, the defendant had executed a bond to the plaintiff, bearing even date with the deed, in the penal sum of 400*l.* he assigned to the plaintiff, for his farther security a salary of 50*l.* which he enjoyed as one of the clerks to the auditor of the imprest, and covenanted to pay the annuity by quarterly payments. He then prayed *oyer* of the bond which was set forth, and also of the condition, which was also set forth, and was, That if the defendant should pay the annuity at the regular quarterly payments, and should perform all the covenants in the indenture bearing even date with the bond, then the bond should be void. He then pleaded—1. That the plaintiff ought not to have any execution against the defendant other than against his real estate, his money in the funds, or his money lent upon real security only, because the indenture of covenant which he had set forth, and *that* mentioned in the condition of the bond were one and the same; that the bond and deed of covenant were both given to secure one and the same annuity. That after the execution of the deed of covenant, and the bond, and before the 22d of *January*, 1777, mentioned in an act, &c. (the insolvent debtors act of 16 G. 3.) viz. on the 7th of *January*, 1776, 20*l.* for two quarters of the annuity became due and was not paid according to the tenor and effect of the said bond, whereby the said bond became forfeited, and the penal sum became due and owing

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to the plaintiff; and that before the first day of *January*, 1776, the defendant was arrested and in actual custody of an officer of the sheriff of *Middlesex*; and held to bail by virtue of a bill of *Middlesex*; and that he surrendered himself in discharge of his bail, and was thereupon committed to the prison of the King's Bench, before the 26th of *June*, 1776, in the said act mentioned, *viz.* on the 17th of *May*, 1776, and continued there till the time of his discharge; and that at the general quarter sessions for *Surry*, held by adjournment on the 29th day of *July*, 1776, he was discharged according to the form and effect of the said act. The plea concluded with a *verification*, and prayed judgment, if the plaintiff ought to have any execution against him, *either than against his real estate, &c.* 2d. That before the 22d *January*, 1776, *viz.* on the 8th of *December*, 1775, he was arrested, &c. (stating the arrest, surrender and discharge as in the former plea). That the indenture on which the plaintiff had brought his action was dated and made, and all debts thereupon owing and accruing from the defendant to the plaintiff were contracted and occasioned before the 22d of *January*, 1776, to wit, on the 7th day of *July*, 1767, and this, &c. wherefore he prayed judgment whether the plaintiff ought to have any execution other than against his real estate, &c.—The plaintiff demurred generally, to each of the pleas.

Lord *Mansfield* said, the question was, whether when there was a bond with a penalty, and also a deed of covenant, and the plaintiff made no use of the penalty, he should be barred of his remedy under the deed of covenant? That he took the case of a
bankrupt

bankrupt and insolvent debtor (as to this point) to be the same. That when a man has two remedies he may elect. That if the plaintiff had made use of the penalty, the case would have been different; but that as he had not, he might proceed as often as he pleased for breaches of the covenant.

Mr. Justice *Buller* said, that here were two pleas, one of which (the second) was upon the deed of covenant. That if the covenant had been the only security, nothing had happened to bar it. That the other plea stated the bond, conditioned for the regular payment of the annuity. That the court could not, because such a bond appeared to have been given, determine the other security to be void—And judgment was given for the plaintiff.

A mere cause of action does not become a debt proveable till judgment is obtained and entered; therefore in an ejectment, a verdict being given for the plaintiff with nominal damages, afterwards and before the judgment could be entered the defendant became a bankrupt, and in the term following the plaintiff signed judgment, and had costs *de incremento* then taxed and allowed to him. Lord *Henley* held these costs did not become a debt till the judgment, and were connected therewith, and that the plaintiff could not be permitted to prove the same as a debt under the commission.

Ex parte Todd
3 Wils. 270.

So in assault and battery before bankruptcy, during the bankruptcy the plaintiff had a verdict with damages, but had not judgment till after the certificate. The court were of opinion the plaintiff could not come in under the commission, that it was not a proveable debt, or a debt due at the time of the bankruptcy.

Walter v.
Sherlock
3 Wils. 272.

Ex parte Sneaps
March 4, 1782.

And upon the same principle, where one *Sneaps* was committed for a contempt in non-payment of costs, which were taxed subsequent to his bankruptcy, but the order for the taxation was made before it.—Upon a motion for his discharge upon the ground of the debt being discharged by his certificate, it became a question, whether this was to be considered as a debt arising *anterior* or *posterior* to the bankruptcy. It was argued, that all proceedings under an order of court were to have relation in point of time to that order, and consequently that as the order was made before the bankruptcy, the debt was to be considered as having originated in that order, and ought to be discharged by the certificate.

The Lord Chancellor observed, it is generally true, that where several distinct acts are necessary for the completion of any business, the completion refers to the inchoation. But the question is, whether the making the order can be considered as such inchoation. And he said he thought it clearly could not. That it might as well be said, the damages assessed in trespass are to have reference to the trespass, which they certainly have not, for they have their origin in the judgment. He took it to be clear, that in all instances in the court of Chancery the *taxation* constitutes the demand, and as the taxation was subsequent to the bankruptcy, the debt is therefore so, and consequently he could not discharge the bankrupt.

But in actions whether of debt, *assumpsit* or for a *tort*, the judgment, when signed, relates to the verdict; and the costs *de incremento*, when taxed, are annexed to those assessed by the jury, and become con-

solidated

solidated with them by a fair and equitable relation of law.

Accordingly, in a case where the plaintiff brought an action against one *Lowe*, by writ returnable the first return of *Trinity* term, 1778, to which the defendant became bail. On the general issue pleaded, the plaintiff recovered a verdict for 100*l.* at the sittings in *Trinity* term. The defendant moved for a new trial, the rule for which was discharged on the 8th of *July*, 1778, the last day of the term: on which day a commission of bankrupt issued against *Lowe*. On the 28th of *July* the plaintiff proved his debt under the commission, being on a promissory note for 100*l.* dated the 25th of *May*, 1778, and his judgment entered on the said verdict, and voted in the choice of assignees—But the commissioners refused to let him prove the costs, which were taxed at 30*l.* because judgment was signed subsequent to the commission.

Aylett v. Harford
2 Black. 1317.

Lord Chief Justice *De Grey* said, the commissioners were mistaken in not suffering the plaintiff to prove his costs, and that the Great Seal, upon petition, would do him right in that particular.

Contra, 1 Atk. 140.

And, in conformity to this decision, in an action for words, and verdict for the plaintiff damages 10*l.* the defendant between the verdict and judgment became a bankrupt, and the defendant was afterwards taken in execution upon the judgment. It was moved to discharge him out of custody upon the authority of the cases of *Graham v. Benton*, 1 *Will.* 41. *Blandford v. Foote*, *Cowp.* 138. and *Aylett v. Harford* above stated. On the other side it was insisted, that the cases cited were either debt or *assumpsit*, that this

Langford v. Ellis
East. Term 1785
B. R.

was

was a *tort* and the damages uncertain at the time of the bankruptcy. But the court held that made no difference. The cause of action exists before the verdict, where a verdict is obtained the damages are known and become a debt, and the judgment, when given, relates back to the time when the plaintiff obtained his verdict. The rule for discharging the defendant was made absolute.

Taylor v. Mills
Comp. 525.

Where a man undertakes to pay a sum of money for another, his undertaking alone will not create a debt capable of being proved under a commission, and if an act of bankruptcy intervenes between the undertaking and the actual payment, it can never be proved, and the creditor can only resort to the bankrupt personally. But if the party engaging to pay the debt of another is taken in execution for that debt, his imprisonment is considered as a payment and satisfaction of the debt, sufficient to give him a right of proving under the commission.

Chilton v.
Whiffin
3 Will. 13.

Thus, in a special action of trespass upon the case, the plaintiff declared, that the defendants and one *William Hinkley* were co-partners in trade and merchandize; that *Hinkley* drew a bill of exchange upon the plaintiff, dated the 18th day of *March*, 1766, for 65 l. payable to one *Robert Clay*, or his order, fifty-five days after date; and in consideration that the plaintiff would accept the said bill, the defendants undertook and promised to find money to pay the bill, take it up, and to save the plaintiff harmless and indemnified, by reason of his acceptance thereof. That he accepted the bill, which became due the 16th of *May*, 1766, and was indorsed by *Robert Clay* to *Heathfield* and *Smith*, who, on the 15th of *September*, 1766,

1766, sued out process from *B. R.* and caused plaintiff to be arrested, and held to bail for the said 65*l.* That on the 24th of *November*, 1766, he put in bail to that action; and in *January*, 1767, was surrendered to the marshal of the Marshalsea; was charged in execution for the debt of 65*l.* and costs, and hath remained in prison there ever since. The defendants pleaded that on the 16th day of *August*, 1776, they became bankrupts, and that the plaintiff's cause of action accrued before they became bankrupts, and that the defendants obtained their certificate on the day of 1767.

Lord Chief Justice *Wilmut* delivered the opinion of the court, that no debt was due or owing from the defendants to the plaintiff, until he was charged in execution, and his body being in prison upon judgment and execution for a certain sum, is the very same thing, as if the plaintiff had paid the debt and costs due on account of the bill and note; and then and not before, the defendants became indebted to the plaintiff; which being after the defendants became bankrupts, the plaintiff could not come in under the commission. He said no debt could be barred by the certificate, but what was a debt contracted with certainty before the bankruptcy. Did the defendants owe to *Chilton* 308*l.* 10*s.* and costs before he rendered his body in satisfaction thereof? They certainly did not. They had promised to pay the money, to furnish the money to take up the bill and to save the plaintiff, *Chilton*, harmless; they broke their promise. *Chilton* was terrified and arrested. Here is an injury to a certain degree, but no debt owing by the defendants to *Chilton* before his body was

was in execution for the certain sum. How could the plaintiff *Chilton*, at the time of the commission of bankruptcy issued, have sworn to a debt, before he had advanced a shilling to the defendants? He certainly could not, but now his body being in execution, he has thereby paid the debt, and consequently can support this action.

*Hockley v.
Merry
2 Stra. 1043.*

Where a man becomes bail for another, it is considered as a contingent debt. And if the bail commit an act of bankruptcy before the judgment, it cannot be proved under the commission.

Accordingly, where the defendant the 9th of *May*, 1734, was bail on a writ of error, on the 25th of *October*, 1734, he committed an act of bankruptcy, and after a commission obtained his certificate. On the 12th of *November*, 1735, the judgment was affirmed. And in an action of debt upon the recognizance, he pleaded his discharge, and that the cause of action arose before his bankruptcy. And Lord *Hardwicke*, Chief Justice, on the trial, held that the defendant was not discharged according to the case of *Tully v. Sparkes*, for this was but a contingent debt, for which the plaintiff could not come in under the commission. And upon the same principle it has been decided that where one man is bail for another, he cannot prove as a creditor under a commission against the principal, till he has paid the debt for which he became answerable; and that if the act of bankruptcy committed by the principal is prior to the bail's having paid the debt, he cannot prove it under the commission.

*Goddard v.
Vanderheyden
3 Wils. 262.*

For in a case where the defendant was arrested by virtue of a writ of special *capias ad respondendum*, as stated

stated in the declaration, and that the plaintiff at the defendant's request became bail to the sheriffs, and entered into a bail bond, and that the defendant undertook to save harmless and indemnify the plaintiff therefrom. The defendant neglecting to put in special bail at the return of the writ, the bail bond was duly assigned, and in *Trinity* term, 1763, an action was brought thereon in the King's Bench against the present plaintiff; and in *Michaelmas* term, 1763, judgment was obtained thereon against the present plaintiff as stated in the declaration, and thereupon the present plaintiff brought a writ of error returnable in the Exchequer chamber, and prosecuted the same till the affirmance of the judgment. On the 10th of *March*, 1764, the present defendant became a bankrupt, and on the 12th of the same month a commission issued against him; upon which he was declared a bankrupt. In *Trinity* term, 1764, judgment was affirmed in the Exchequer chamber, upon which the present plaintiffs brought a writ of error returnable in parliament. In *January*, 1765, the writ of error in parliament was non-prossed; and on the 21st of the same *January*, a writ of *fieri facias* issued against the present plaintiff's goods, and thereupon he paid to the plaintiff in the original cause his debt due from the present defendant and costs. On the 22d of *May*, 1765, the defendant having conformed to the laws relating to bankrupts, his certificate was allowed.

The question that arose was, whether the plaintiff be entitled to recover the debt and costs paid by him, and the costs he himself was put to.

The

The court declared they were all of opinion, the debt for which this action was brought could not be proved under the commission; for that the plaintiff *Goddard* could not swear that this debt was due and owing to him before he actually paid the debt and costs upon the judgment upon the bail bond in *January, 1765*, which was ten months after the act of bankruptcy.

They said the bankrupt acts do not express what kind of debts shall come under the commission; the statute 4 & 5 *Ann. c. 17.* says persons becoming bankrupts and conforming, &c. shall be discharged from all debts due and owing at the time of the bankruptcy, and if sued for any such debt, may plead in general, that the cause of action accrued before such time as he became bankrupt; they thought that the words, "cause of action," mean such a debt as is due, owing and payable in all events; the creditor must swear to the sum due, and if he swears to more than is due, he will be guilty of perjury. A debt may be due at the time of the bankruptcy, though not demandable till some time afterwards, and therefore the statute 7 *G. 1. c. 31.* was made to let in such debts to be proved under the commission; and though the preamble of that statute speaks only of bonds, &c. given for goods in trade, yet the enacting words extend to all sorts of bonds for payment of money, and that the words *such security*, do not mean security for such a sort of debt, but security by bonds, bills, notes, &c. That in case of debts uncertain in point of liquidation, as between two merchants in balancing accounts, then the matter rests upon a claim, to ascertain the sum that was due

due at the time of the bankruptcy. That this is an action of the case upon a verbal promise sounding wholly in damages. At the time of the bankruptcy, the plaintiff *Goddard* had sustained no damages, it was then wholly uncertain whether he would suffer any damage; one cannot say what certain debt he could swear to; he brings a writ of error upon the judgment recovered against him on the bail bond, and thereby would induce the court of Exchequer chamber to believe that the judgment was erroneous, and that he owed nothing thereupon; how then can he go at the same time before the commissioners, and swear the defendant owed him so much money on that account, when he had not paid a farthing of it? The plaintiff could not have sworn to a debt in this case, so as to have held *Vanderheyden* to special bail. Upon the whole they were of opinion that judgment must be for the plaintiff.

And the case is the same in collateral undertakings if the party engaging to secure the debt of another, himself becomes bankrupt before that debt is payable by the principal, the creditor cannot prove under his commission.

Thus, in a case sent out of Chancery for the opinion of the court of King's Bench, it appeared, that on the 10th day of June, 1773, *James Adney*, as broker, sold to *George Henshaw* quantities of *Russia* tallow, the property of *John Buckholme*; and there being a balance of 280 l. 18 s. 4 d. due to *Buckholme*, *Adney* gave him *Henshaw's* note, dated the 10th day of June, 1773, for 306 l. 13 s. payable to *Buckholme* five months after date, being the price of the said tallow. In July, 1773, *Henshaw* wanting more tal-

Ex parte Adney
Cowp. 460.

low,

low, *Adney*, as broker, applied to *Buckholme* to sell it him; when *Buckholme* told him, that as *Henshaw* was indebted to him at that time as above, and as he had no other security than the above note, he declined giving him further credit; whereupon *Adney* answered, that *Henshaw* was a safe man; that the note would be regularly paid; and he might safely give him credit for more goods; that he *Adney*, in consideration of the sum of 1*l.* 10*s.* 7*d.* paid him as a premium, would guarantee or secure the payment of the said note; which proposal *Buckholme* agreed to; and paid him the said 1*l.* 10*s.* 7*d.* and afterwards delivered more goods to the use of *Henshaw*, and *Adney*, on the 12th of *July*, 1773, gave *Buckholme* the following undertaking signed by him, viz. "In consideration of the sum of 1*l.* 10*s.* 7*d.* received of
 " Mr. *John Buckholme*, I hereby make myself answerable for the due payment of *George Henshaw's*
 " note; date the 10th of *June*; order *J. Buckholme*,
 " for 306*l.* 13*s.* payable in five months, and due
 " the 10th of *November*."

On the 8th day of *September*, 1773, a commission of bankrupt issued against *Adney*; and he was declared a bankrupt. *Henshaw* did not pay the note when it became due, but continued his trade till the 2d of *December*, 1773; when a commission of bankrupt was issued against him, and he was declared a bankrupt.

Buckholme having petitioned the Lord Chancellor for liberty to prove the debt of 306*l.* 13*s.* under *Adney's* commission, his lordship ordered that a case should be made for the opinion of the Judges of his Majesty's court of King's Bench, upon the following question; "Whether the said engagement so entered

“tered into by the said *James Adney*, is or shall be
 “considered as a debt due from the said *James Adney*,
 “before the date and suing forth of the said commission
 “against him, so as to be proved by the said *John*
 “*Buckholme* under the said commission? Or whether
 “the said engagement is to be considered as a colla-
 “teral security from the said *James Adney*, the bank-
 “rupt, to the said *John Buckholme*, for the payment of
 “the said sum of 306 l. 13 s. mentioned in the said
 “note, in case the said *George Henshaw* did not pay the
 “same at the time the said note became payable;
 “and consequently a debt only accruing due from the
 “said *James Adney* to the said *John Buckholme* from
 “the time default was made by the said *George*
 “*Henshaw* in payment of the said note?”

Lord Mansfield. There can be no doubt or argu-
 ment in this case upon any general principle of law.
 It is very certain that contingent debts cannot be
 proved under the statute 7 G. 1. c. 31. And debts
 payable at a future day are not to be proved unless
 they come within the statute 7 G. 1. It is as cer-
 tain, that if this be only a collateral undertaking to
 pay, if *Henshaw* did not, the demand cannot be
 proved under *Adney's* commission. But if it be an
 engagement by *Adney* to pay at all events, without
 regard to *Henshaw*; then it is a debt that may be
 proved under *Adney's* commission. And so the court
 of Chancery clearly understood it, by the terms in
 which the case, and the question sent for our opinion
 are stated.

The law is equally clear which ever way the un-
 dertaking is construed: and the whole question de-
 pends upon the construction of three lines of the en-
 gagement.

gement. It might be meant as a collateral undertaking only; viz. in case *Henshaw* did not pay, that then *Adney* would be liable for the debt. But it is not worded so.

The original undertaking by *Henshaw* is a regular negotiable note, and if *Adney* had indorsed it, though demand must have been made, &c. before *Adney* would be liable; yet in that case the debt might clearly have been proved under the commission. But the engagement by *Adney* is, that *Henshaw's* note shall be paid when due, therefore if not a collateral undertaking, there would be no necessity to resort to the original drawer of the note.

Aston, Justice. The question is, what was meant by this undertaking? The smallness of the premium paid to *Adney*, viz. only 1*l.* 10*s.* 7*d.* affords a strong ground for supposing it was intended as a collateral undertaking only.

Lord Mansfield. The whole depends upon the intention of the parties. Afterwards the court certified in these words. "Having heard counsel on both sides, and considered this case, we are of opinion, that from the occasion of giving *Adney's* note, and the terms in which it is conceived, the parties intended it to be a collateral engagement only, in case *Henshaw* should not pay his note at the time it became due; and therefore it rested in contingency (at the time the commission issued against *Adney*) whether this engagement ever would become a debt or not; and consequently it could not be proved as such, under *Adney's* commission."

CHAP. X.

Of Joint Debts.

JOINT creditors are intitled to a distribution of the joint or partnership estate without the separate creditors being permitted to participate with them, but notwithstanding separate creditors are not intitled to share the dividend of the joint property until the joint creditors have received 20s. in the pound, yet they are, upon petition, let in to prove their respective separate debts under the joint commission, paying contribution to the charge of it, and as the joint or partnership estate is in the first place to be applied to pay the joint or partnership debts; so in like manner the separate estate shall be in the first place applied to pay all the separate debts. This is settled as a rule of convenience, and it is resolved that if there be a surplus of the joint estate, besides what will pay the joint creditors, the same shall be allotted in due proportions to the separate estate of each partner, and applied to pay the separate creditors. And if there be on the other hand a surplus of the separate estate, beyond what will satisfy the separate creditors, it shall go to supply any deficiency that may remain as to the joint creditors.

On a joint debt, if separate commissions are taken out against the joint debtors, the creditor may prove his whole debt under each commission and receive a dividend, so as he does not obtain more than 20s. in the whole.

Ex parte Sandon
1 Atk. 68.

Ex parte
Crowder
2 Vern. 706,

Goss v. Dufresne oy
Davies 373.
Ex parte Cook
2 P. W. 501.

Ex parte Smith
3 P. W. 237.

In a case where *A.* lent money to *B.* and *C.* on their bond, *B.* became a bankrupt; and the commissioners assigned his estate in trust for his creditors.

A. sued the bond against *C.* the other obligor, and recovering judgment against him, takes him in execution by *co. sa.* and *C.* thereupon paid *A.* 24 *l.* but *C.* being old and having no estate, and living only upon charity, *A.* consented to discharge *C.* out of execution.

Upon which it was objected that this being an escape with the consent of the plaintiff the obligee, and the debt being in law entire, it was a discharge of the whole debt, and should operate, as well for the benefit of *B.* the bankrupt the other obligor, as of *C.*

Lord Chancellor *Harcourt* ordered that *A.* the petitioner, the obligee in the bond, should come in as a creditor for a moiety of the remaining money due in the bond; for the execution against *C.* being subsequent to the commissioners assignment of the estate of *B.* the bankrupt, should not (at least in equity) discharge *A.*'s demand out of the estate of the bankrupt. But in regard each in equity was liable but to half the debt, and *C.* was not the original debtor for the whole, *A.* the petitioner should only have relief for a moiety of his remaining debt against the assignees of *B.* the bankrupt. But his lordship said, if *B.* the bankrupt had been the original debtor, and had borrowed all the money, then *A.* should have come in before the assignees as a creditor for all his debt.

Ex parte
Blankenhagen
June 23d 1785.

Where there is a joint and several creditor, he must according to the rule of the court now firmly established, make his election whether he will come

in

in upon the joint or the separate estate, that is, which he will come in upon, in *preference*; for which ever he may elect, he will be intitled to come in upon the surplus of the other, if there should be any. And in order to make his election, he must have a reasonable time to inquire into the state of the different funds, but he is not intitled to defer such election until a dividend be declared. Where there is a joint debt and separate commissions taken out, we have seen, in a former chapter, that it has been generally understood such joint creditor could not prove his debt except for the purpose of assenting or dissenting to the certificate, but that he must proceed to take out a joint commission; however, though this is the general rule, it is not altogether without an exception, as appears by the cases there mentioned.

Aate, 5.

CHAP. XI.

Of Annuitants, Apprentices, and other Creditors.

Ex parte Artis
3 Vez. 490.

THE general rule as to common annuities is, that where one is intitled to an annuity from another, which is not a rent charge on land, or on a specific part of the grantor's estate, but personal, to be paid by him who afterwards becomes bankrupt, it is only a general demand on him and his estate, and there is nothing a debt on his estate but the arrears of the annuity at the time of the bankruptcy, unless the penalty of the annuity bond has become forfeited; for otherwise the payments accruing afterwards become a debt after the bankruptcy, and cannot be proved. But where there has been a forfeiture prior to the bankruptcy, in order to prevent the injustice of admitting the creditor only to prove the arrears accrued due before the bankruptcy, and the great inconvenience that would ensue if the annuity should be received from time to time as an accruing debt on the estate, by which means the division of the estate would be perpetual, and there could be no final dividend during the annuitant's life, the court puts it in another shape of setting a value on the annuity because it was only a general personal demand. And in setting this value, consideration must be had of the time the annuitant has enjoyed it.

Ex parte
Le Comptre
1 Atk. 251.

Wherefore on a petition in which it appeared that the petitioner in the year 1720 gave 300*l.* for an annuity

annuity of 30 *l.* for her life, payable out of the estate of the bankrupt, which he not being able to pay her by reason of the commission, she petitioned to be admitted a creditor for the whole 300 *l.*

The Lord Chancellor ordered that it be referred to the commissioners to settle the value of her life, and that she be admitted a creditor for such valuation, and the arrears of the annuity, it being unreasonable she should have the whole 300 *l.* when she had enjoyed the annuity 18 years.

And the like order was made in another case, where a bankrupt before the time of his bankruptcy, entered into an agreement to pay an annuity of 20 *l.* a-year, for the maintenance of an infant till his age of fourteen, with a penalty on non-payment.

Ex parte Belton
1 Atk. 251.

By his failing in one of the payments the penalty became forfeited. The guardian of the infant, who had maintained him, applied to the court, by petition, to have a value set upon this annuity, and that the infant may be admitted a creditor for the sum at which it should be valued.

Lord Chancellor said, he was of opinion, that a value ought to be put upon the annuity, that it might be proved as a debt under the commission.

It is observable that the reporter in the case *Ex parte Le Compte*, does not notice the annuity's having been forfeited before the bankruptcy; however, we must presume that circumstance to have existed in the case, to make it conformable to other decisions upon the same subject.

2 Black. 1107.

In case of an apprentice where the master becomes bankrupt, commissioners recommend it to the creditors to allow him a gross sum out of the estate for the purpose

1 Atk. 261.

purpose of binding him to another master, as it would be hard to make him come in as a creditor under the commission, but this, though it is equitable and just, must be considered as an indulgence, and not a right, for the court can only order him to be admitted as a creditor.

Ex parte Sandby
2 Atk. 149.

Accordingly on a petition, it appeared that the petitioner on the 10th of *January*, 1744, was put apprentice to *Ward* a bookseller at *York*, and the sum of 80*l.* was given with the petitioner as an apprentice for seven years. In *July* following a commission of bankrupt was taken out against *Ward*, and being declared a bankrupt, assignees were chosen, who sold off the bankrupts effects, and he became the supervisor of the press to the purchaser, and incapable of performing his part of the contract, nor was the petitioner able to raise any money to put him out apprentice to another master, and as the commission was a recent one, probably no dividend might be made in a year, or year and a half.

It was prayed by the petitioner, that on deducting 10*l.* out of the 80*l.* for his board with the bankrupt during the six months he lived with him, that the assignees might be ordered to pay the sum of 70*l.* out of the effects of the bankrupt already come to their hands, and not oblige him to prove it as a debt under the commission.

Lord *Hardwicke* was at first doubtful, and seemed inclined to grant the petition, but upon ordering the secretary of bankrupts to search for precedents, two were produced in Lord Chancellor *King's* time, and two in Lord *Talbot's*, where they directed that an apprentice should come in as a creditor only (after deducting

deducting for the time he lived with the bankrupt) upon the remaining sum, upon which his lordship ordered that the petitioner should be admitted a creditor for 70 £ only.

A bond, though it is not assignable at law may be proved by the assignee under the commission, but the assignor must join in the deposition that he hath not received the debt, or any part thereof, or any security or satisfaction for the same.

In bills of exchange and promissory notes there is a double contract, the first between the principal debtor and creditor, and also an implied contract, that the principal debtor will indemnify the surety, so that if the creditor the indorsee comes upon the surety the indorser, the indorser or his assignees may come in against the original or principal debtor. This is the case between principal and surety, and is likewise the case where an indorser is barely a surety, and no consideration is paid by the original drawer. But on the contrary if *A.* draws a bill upon *B.* who has effects of *A.*'s in his hands, afterwards his bill is negotiated and indorsed over; there is no suretyship in this case, for *A.* did not draw upon *B.* as a surety, but as having effects of *A.* in his hands, by which he was obliged to answer the draught of *A.* and therefore the indorsing it over to another will not make the indorser only in nature of the surety of *A.* but every indorser will be considered as a new original drawer. 1 Atk. 123.

Thus where *William Winmore* drew several bills of exchange on *Harris* (who was his agent in *London*) some of which were payable to *Harper*, and others to *Edward Stephens* or order, for different sums amounting

amounting to 2060 *l.* which last bills were remitted to *Richardson* and company by *Stephens* on his own private account, in order to enable them to discharge bills of exchange which *Stephens* had on his separate account, in order to serve *Winsmore* drawn on *Richardson* and company, and *Richardson* had negotiated the said bills as *Stephens* directed; and several of them to the amount of 1565 *l.* being drawn by *Winsmore* on *Harris*; *Richardson* and company, indorsed the same, not doubting but *Winsmore* or *Harris* would have taken care the same were punctually paid when they fell due, but instead thereof, *Winsmore* stopped payment, and never remitted *Richardson* and company any money or effects to pay the said bills or any of them.

Lord Hardwicke said, his doubt at first was, whether *Harris* had any effects of *Winsmore's* in his hands, for if he had, there would have been no pretence that the indorsers should come in against *Winsmore's* estate, but *Harris* appears to have had no effects of *Winsmore's* in his hands, and therefore accepted the bills merely to give credit to *Winsmore* as a surety, and consequently the assignees of *Richardson* and company must be admitted as creditors under *Winsmore's* commission, for so much as they have paid under *Richardson's* commission to the indorsees of *Winsmore's* bills of exchange.

His Lordship therefore ordered that the assignees of *Richardson* and company be admitted to come in as creditors under *Winsmore's* commission for 744 *l.* and that they be paid a dividend out of his estate in respect thereof rateably with the other creditors.

The holder of a bill of exchange is intitled to prove his debt under a commission against the drawer, acceptor, and indorser, and to receive a dividend from each

each upon his whole debt, provided he does not in the whole receive more than 20s. in the pound. But there is a distinction in this case, where the creditor applies to prove his debt after having received a part, and where he applies to prove previous to having received any payment or composition.

Cooper v. Pepys
1 Atk. 107.

For where Mrs. Cock drew a bill of exchange in England upon her brother *Vandermafb* in Holland for 100*l.* payable to J. S. *Vandermafb* accepted the bill; and both he and Mrs. Cock became bankrupts, and out of the effects of *Vandermafb* so much money was paid by the assignees of the commission of bankruptcy against him to his creditors as amounted to 40*l.* per cent. Some of the creditors of Mrs. Cock petitioned Lord Chancellor that they might come in as creditors of Mrs. Cock for the whole 100*l.* alledging that though this should be granted them, yet the effects of Mrs. Cock would not extend to satisfy them their just debt of 100*l.* even including the 40*l.* per cent. which they had before received out of *Vandermafb*'s estate.

Ex parte
Ryfwicke
2 P. W. 89.

Lord Macclesfield. It is material whether this payment of 40*l.* per cent. made by the assignees of the commission against *Vandermafb*, was out of the effects which Mrs. Cock had in *Vandermafb*'s hands; for if so, it would be as if paid by Mrs. Cock herself; and if paid by Mrs. Cock herself, then there can be but 60*l.* per cent. due, and consequently the creditors of Mrs. Cock shall come in for no more than this remaining 60*l.* On the other hand, if the 40*l.* per cent. paid by the assignees of *Vandermafb*'s estate, was really paid out of *Vandermafb*'s effects, then *Vandermafb*'s estate is as a creditor for this 40*l.* and the creditors

creditors of Mrs. Cock's estate must come in as creditors for the whole 100 *l.* and be taken as trustees for the 40 *l.* debt paid out of *Vandermaasb's* estate.

Therefore let the creditors of Mrs. Cock come in for the 60 *l.* per cent. and let it be enquired out of whose effects the 40 *l.* per cent. was paid by *Vandermaasb's* assignees; and if the 40 *l.* per cent. shall appear to have been paid out of *Vandermaasb's* own effects, then let the creditors of Mrs. Cock come in for the whole 100 *l.* out of which they must answer 40 *l.* per cent. to the creditors of *Vandermaasb*.

Ex parte
Lefebvre
a P. W. 407.

So where *A.* gives a promissory note payable to *B.* or order for 200 *l.* value received. *B.* indorses it to *C.* who indorses it over to *D.*

A. becoming a bankrupt, a commission of bankruptcy issued out against him, and *D.* comes in as a creditor, and pays his contribution money as claiming a debt of 200 *l.* and proves the debt.

Then *B.* becomes a bankrupt, and a commission being taken out against him, *D.* in like manner as before, pays his contribution to this commission as for the whole debt of 200 *l.* and proves the same; afterwards, *C.* the last indorser becomes a bankrupt, and on a commission taken out against him, *D.* (as before) pays his contribution money as for the whole debt of 200 *l.* and proves the same.

The assignees under the commission of bankruptcy against *A.* the first bankrupt, pay a dividend to *D.* after the rate of 5 *s.* in the pound out of *A's* estate, and then the assignees in the commission of bankruptcy against *B.* propose to make a dividend out of *B's* estate, but refuse to pay *D's* dividend as a creditor for the whole 200 *l.* but only for the 150 *l.*

50 *l.* of the 200 *l.* being paid off by the dividend made out of *A.* the first bankrupt's estate.

Lord Chancellor *King* said, the 5 *s.* in the pound which the petitioner *D.* had received upon the dividend out of the estate of *A.* must be taken to reduce and lessen the debt due to the petitioner upon this note; for as 5 *s.* in the pound is paid in part of the debt, by necessary consequence so much less of the debt remains due, and therefore the petitioner must take a dividend as for a debt of 150 *l.* only, unpaid upon the note; but with regard to so much of the contribution money, as the petitioner *D.* paid to the assignees, in the commission of bankruptcy sued out against *B.* the first indorser beyond the debt of 150 *l.* remaining due on the said note, he ordered that to be refunded.

But the latter of these cases appears not to be law at this day. For where a bankrupt had given *Wildman* bills of exchange on *Vanvillen* and others in *Holland*, who made themselves liable by accepting them, and afterwards failed and compounded with their creditors. *Wildman* was admitted a creditor under the commission for his whole debt. But before a dividend he received a composition of 2 *s.* 6 *d.* in the pound from the acceptor of the bills.

Upon a question, whether *Wildman* should receive a dividend upon his whole debt, or only upon what should be due after deducting the 2 *s.* 6 *d.* in the pound received by him.

Lord *Hardwick* said the creditor had two personal securities. That in the common case abstracted from the cases of bankrupts, if there are several obligors the obligee may have several actions against them

Ex parte
Wildman
1 Atk. 109.

them all, several judgments and several executions; but he shall not levy more than one satisfaction for his debt, if he does, courts of law will relieve. The same in bills of exchange. Actions, &c. lie against drawer and all the indorsers, but only one satisfaction for the debt. So under commissions of bankruptcy, the creditor is intitled to come under the commission against all the obligors, drawers, &c. and this is not a preference given to such a creditor, but a benefit he is entitled to at law, upon all his securities, till he is compleatly satisfied. He observed that to say *Wildman* should only be paid a dividend on the sum left after deducting what he had received would be taking away from a man the double security he had, and which he may use in law and equity, till he is satisfied his whole debt. And as in this case the composition was not paid till after the debt proved, he shall receive a dividend on the whole debt, and shall account hereafter for what he has received, or shall receive on the bills of exchange; and this will not be any prejudice to the estate, for if he receives more from those bills of exchange than will answer twenty shillings in the pound, he shall account to the assignees for such surplus. And his lordship observed this case differed from *Cooper v. Pepys*, because the creditor there had received the benefit before he had attempted to prove his debt against the indorsee under the commission—Therefore he ordered that *Wildman* should be let in to receive a dividend on his whole debt.

2 Atk. 106.

It is true the distinction as to the time, when the creditor receives part in payment from the surety, does in some cases induce a hardship, but that distinction

tion appears solid and reasonable, for how can a creditor swear that the bankrupt is actually indebted to him in a particular sum when he has already received part of it? The hardship to which I allude exists where a surety for a debt pays off part subsequent to an act of bankruptcy committed by the principal, but prior to the creditors proving his debt under the commission, in which case we have seen that the creditor cannot prove the whole debt and stand as a trustee for the surety; neither can the surety himself prove, because *quoad* him, it became a debt subsequent to the bankruptcy.

Thus where *Garway* drew a great number of bills payable to *Pere* and *Afgill* upon *Hatton*, who had no effects of *Garway's* in his hands, but however accepted the bills for the honour of the drawer.

Ex parte Marshall
1 Ack. 129.

Garway and *Hatton* both became bankrupts.

The bill-holders prove under both commissions, and receive dividends, but not sufficient to pay 20 s. in the pound.

The assignees of *Hatton* preferred a petition to the Lord Chancellor and prayed to stand in the place of the bill-holders *pro tanto*, as they had received under *Hatton's* commission against the estate of *Garway*; *Hatton* as was insisted by the petitioner's counsel being to be considered as a surety for the debt, and *Garway* the principal.

The Lord Chancellor on the first hearing made an order accordingly, but upon its coming on again, his lordship ordered that the petitioners as assignees of *Hatton*, should stand in the place of the bill-holders *pro tanto*, as *Hatton's* estate had paid on account of his

his acceptance of the said bills, but should not be entitled to any dividend from *Garway's* estate, till the bill-holders had received a full satisfaction for their debts; and if the surplus of *Garway's* estate, after the bill-holders were fully satisfied, should not be sufficient to answer what *Hatton* had paid as the acceptor of *Garway's* bills, then his Lordship declared that nothing in his order, should prejudice any right the petitioners might have by action against the person of *Garway* for the residue of their demand, notwithstanding *Garway* had obtained his certificate; for his lordship said it seemed to him, as if *Hatton's* demand did not properly arise till after the issuing of the commission against *Garway*; because though there is an implied contract between drawer and acceptor, yet there is no breach on the part of the drawer till after his bankruptcy, and consequently *Hatton* is not a creditor under the commission, because his debt is subsequent to it; nor does he fall under the description of persons in the 7 G. 1. who may sue out commissions, though their debts are payable at a future day. There *debitum in presenti, solvendum in futuro*, but here it was contingent whether it would ever be a debt, as *Garway* might not have failed.

So where a father tenant for life of a settled estate with remainder to the son in tail. The father as soon as the son came of age prevailed on him to join in suffering a recovery, and in a mortgage of the estate for money for him.

The father afterwards became a bankrupt.

The estates comprised in the mortgage consisted of others belonging to the father, besides the settled one.

Kettier v.
Raynes
In Can. June 12,
1784.

one. The mortgage was made for 3,700 *l.* The estates were sold by the mortgagee after the bankruptcy for 2,224 *l.* 1,425 *l.* of which was produced by sale of the settled estate.

This bill was brought with a view of enabling the son to prove under the commission his proportion of the money raised by sale of the settled estate.

Lord Chancellor. I cannot distinguish this case from the common one of *A*'s joining in a bond or giving a collateral bond to secure the debt of *B.* in which case the surety cannot prove the debt under the commission, unless he has been actually called upon for the money previous to the bankruptcy.

The estate is only a pledge, and there is no debt till the son is called upon and pays the money, which in this case was done by sale of the estate, but not till after the father's bankruptcy. I do not know how to distinguish between a man's pledging his estate and his person, as when he joins in a bond.

In order to call for any dividend in his own person, and his own name, he must be a creditor at the time of the bankruptcy; but in this case, I do not know how to make the son such.

The mortgagee has made his election, and the pledge is sold, then the question is, whether the son's estate being sold, intitles him to come in as a creditor under the commission. My doubt is as to the date of the debt, but I own I cannot distinguish this from a personal pledge. As no money had been paid before the bankruptcy, it seems to me that the plaintiff is altogether without relief, therefore the bill must be dismissed, but without costs.

Anonymous
1 Atk. 140.

The costs and charges of protesting bills before an act of bankruptcy, may be proved, but it has been determined, that such costs accrued by protesting bills after a commission of bankrupt issued, cannot be proved.

Ex parte Marlar
1 Atk. 151.

Commissioners of bankrupts do not allow creditors to prove interest upon notes or bills, unless it is expressed in the body of them. And this rule was approved by Lord *Hardwicke*, who said, even at law where notes are for value received, and interest is not expressed, the jury do not give the plaintiff, in an action upon the notes, interest for them but by way of damages only. But the creditor may prove the full sum for which the notes were given, notwithstanding he received 5 *per cent.* discount.

A child living with the father, and earning money for itself, may, if the father receives that money, be admitted a creditor under a commission against him.

Ex parte
Macklin
2 Ves. 675.

Thus, upon a petition on the part of Miss *Macklin* to be let in as a creditor on the estate of her father a bankrupt, for the money he had received from the managers of the theatres on her account, offering an allowance thereout for living with, and being maintained by him, during the time of her acting on the stage.

It was alledged on her part, that the court is so far from giving the father all the earnings of the child, as not to suffer a father to be eased of the maintenance of a child who has a fortune, but will let the whole interest accumulate, and the father maintain the child, unless unable to do so.

Lord Chancellor said, he was under some difficulty for the sake of the precedent; for it is true that this question

question is the same as it would have been between the daughter and the father, if he had not been a bankrupt, and could answer to an action for himself; whether after all this transaction the daughter could in an action have recovered against the father all this money, as money had and received to her use? He said it might be dangerous in *London* to lay it down as a general rule, that if a father having several children, who earn money which he receives, becomes bankrupt, every child can come in and claim his debt for that money so had and received while they lived together, and were part of his family. A father frequently sends out his son to work as journeyman, and his earnings are taken to be the fathers. Here, said his lordship, the father, mother and daughter were all actors, and lived together; the father received the whole. It is extraordinary to say, that after a length of time this shall be all called back, because of an act of bankruptcy. He referred it therefore to the commissioners to inquire, how much the father received to the child's use, unless as to so much as was a covenant with the daughter herself.

A landlord having a legal right to distrain goods while they remain on the premises, the issuing a commission of bankrupt against the tenant, and the messenger's possession of the goods of the tenant, will not hinder him from distraining for rent, for it is not such a *custodia legis* as an execution, and even there, the law allows the landlord a year's rent. And the assignment of the commissioners of the bankrupt's estate and effects is only changing the

1 Atk. 102, 103,
104.

property of the goods, and while upon the premises they remain liable to be distrained.

And as a creditor, after proving his debts, may elect to abide by such proof or relinquish it, and proceed at law; so a landlord who is considered in a higher degree than a common creditor, may make his election to waive his proof, in his distress for rent.

Ex parte Grove
1 Atk. 104.

But particular circumstances may deprive the landlord of this right, as if he neglects to distrain, and suffers the goods to be sold by the assignees. Thus, where a commission issued against *A.* who was a tenant of *B.*'s, and owed him twelve years rent. *B.* the landlord came in, and proved his debt under the commission, and the assignees sold all his goods to *Grove* the petitioner, who lived in the tenant's house. The landlord, three years after proving his debt, distrained upon the goods, as being still upon the premises.

The question was, whether proving it as a debt under the commission, and swearing he had no security, is not a waiver of his right to the goods as a landlord?

Lord *Hardwicke* said, what created the difficulty was, that every creditor must swear whether he has a security or not; if he has a security and insists upon proving, he must deliver up the security for the benefit of the creditors at large, be they mortgages or pledges. But that this was a new case, because it is a legal lien which the landlord has, and not upon the same footing with common securities; and the only question is, whether his proving it as a debt,

and swearing he has no security, is not a waiver of the distress?

His Lordship, after taking time to consider, declared that the vendee of the goods under the assignee is intitled to the goods, and ordered that the proceedings of the landlord upon the replevin should be restrained, and confined him to his remedy under the commission.

In some instances, though the landlord has made no distress, he is yet considered to be within the equity of the statute (8 Ann. c. 14.), which gives him a year's rent upon executions; a commission of bankrupt being an execution in the first instance. And in a subsequent case the same principle seems admitted, though the application was refused on account of the length of time since the bankruptcy.

1 Atk. 104.

For the landlord of the bankrupt having preferred his petition to be paid by the assignees under the commission, the rent that was in arrear at the time the commission was taken out.

Ex parte
Descharmes
1 Atk. 103.

It appeared in evidence, that the whole estate and effects of the bankrupt were possessed by the assignees duly chosen under the commission, and sold by them seven years before this petition.

Lord Chancellor pronounced the landlord's demand to be too late, and that having lost his remedy by distress, there being no goods on the premises, he could only be considered as a common creditor, and that he must come in *pro rata*.

On a distress for rent, goods were sold, and 77 l. 3 s. remained in the constable's hands, who became a bankrupt. The tenant dies, and his executor

Ex parte Dobson
7 Vin. Abr. 74.

prays to be paid this money by the assignees, in preference to the other creditors.

It was argued that this comes to the hands of the constable by due course of law; and the case of *Wright v. Dixon* was cited, where goods were taken in execution by *Wilcox*, bailiff of *Westminster*, who died. Afterwards the judgment and execution were set aside; and the court ruled, that the widow and executrix of *Wilcox* should refund the money, though she alledged she had not assets to pay specialties.

But the Lord Chancellor said, that case was against an executrix, and though the law makes a difference between one creditor and another; yet in case of bankruptcy all creditors are upon an equal footing. If any thing remained in specie it might be different, but here the money is embezzled by the constable. He therefore ordered the petitioner to come in as a creditor with the rest.

If an executor becomes bankrupt, as he acts in *auter droit*, his bankruptcy does not take away the right of executorship, and the legatees or creditors of the testator cannot prove under the commission, unless the bankrupt has committed a *drastavit*. But though a bankrupt executor may strictly be the proper hand to receive the assets, yet if his assignees have received any of the property, the Lord Chancellor may appoint a receiver, with whom the assignees shall account. And this was done upon a petition, where it appeared,

That *William Ellis* and *Sarah Hodgkins* were bond creditors of *Philip Hughes*, who made his will, and appointed *Thomas Beetenfon* and *William Winsmore* executors, who jointly proved the will; but *Beetenfon* died

died before he had possessed any of the assets of *Hughes*. *Winsmore* received part of *Hughes*'s effects, and afterwards became a bankrupt. *Ellis* and *Hodgkins* applied to *Winsmore*'s assignees to get in the effects of *Hughes*, that they might respectively be paid what was due to them on their bonds. But the assignees insisted they ought not to receive the full satisfaction out of the effects, but ought to come in with the other creditors of *Winsmore*, and receive an equal dividend with them.

The petitioner therefore prayed that it might be referred to the commissioners to inquire what specific effects of *Hughes* remained unreceived, and that the same might be got in, and the petitioners paid what was respectively due to them, before any distribution made amongst *Winsmore*'s creditors.

Lord *Hardwicke* said, he could not make the order prayed by the petition, because *Hughes*'s debts must be paid in a course of administration, and it did not appear but there might be debts of a higher nature. His Lordship likewise thought it improper to direct the assignees to deliver over *Hughes*'s effects to *Winsmore*, but in order to secure the effects of the testator, appointed a receiver to whom the assignees were to account for as much as they had got in of *Hughes*'s assets.

One inhabitant may prove for himself and the rest of the parishioners, because he may swear, that neither he nor the rest of the parishioners to his knowledge or belief had received any security or satisfaction.

Commissioners, after a man becomes a bankrupt, compute interest upon debts no lower than the date

Ex parte Child
1 Atk. 111.

2 Atk. 528.

1 Atk. 79.

of the commission, because it is a dead fund, and in such a shipwreck, if there is a salvage of part to each person, it is as much as can be expected. But there is no direction in the act for that purpose, and it has been used only as the best method of settling the proportion among the creditors, that they may have a rate-like satisfaction; nor does the certificate operate as a discharge of the fund before vested in the assignees, and thereby to deprive the creditors of subsequent interest, but extends only to any remedy to be taken against the person of the bankrupt or his future effects.

1 Atk. 80.

A specialty creditor cannot have interest beyond the penalty contained in his security, but a creditor by note carrying interest may receive the full amount; however, if the bearing interest is not specified in the note, it will not of itself intitle the holder to claim any.

1 Atk. 151.

There is a difference between debts that carry interest and a special deposit of goods and stock; for in the former the interest shall be continued down to the date of the commission, but in the latter it is otherwise, for the interest stops from the time of the deposit, and a calculation shall be made of the value of the whole intire thing deposited, both principal and interest, be it stock or goods, according to the market price at the time of the deposit.

Bromley v.
Child
1 Atk. 259.

Thus on a petition on the behalf of the representative of a person who was entitled to Navy bills to the amount of 6000 l. and who had in the year 1711 deposited them in the hands of Sir *Stephen Evans* and his partner *Hale*, who gave a note specifying them, and promising to be accountable. In six months after Sir *Stephen Evans* became a bankrupt.

The

The application was, that the petitioner be admitted before the Master, to prove both the principal and interest; as Navy bills in their nature carry interest.

When the petitioner appeared before the commissioners, they set a value upon the Navy bills, according to the market price they bore at the day of the deposit, which was only 4,200 l. because there was a large discount. The Lord Chancellor refused the petition, because this was a deposit, at which time interest stops.

C H A P. XII.

Of the Assignees.

THE 5^G. 2. c. 30. s. 26. enacts " That
 " where any commission of bankrupt shall
 " issue, the commissioners therein named, or the
 " major part of them thereby authorised, shall
 " forthwith, after they have declared the person or
 " persons against whom such commission shall
 " issue a bankrupt, cause notice thereof to be given
 " in the *London Gazette*, and shall appoint a time
 " and place for the creditors to meet, which meet-
 " ing for the city of *London*, and all places within
 " the bills of mortality, shall be at the *Guild-hall*
 " of the said city, in order to choose an assignee or
 " assignees of the said bankrupt's estate, and effects.
 " At which meeting, the said commissioners shall
 " admit the proof of any creditor's debt, that shall
 " live remote from the place of such meeting of the
 " commissioners, by affidavit, or by solemn affir-
 " mation, and also permit any person, duly author-
 " rised by letter of attorney from such creditors, oath
 " or affirmation being made, of the due execution
 " thereof, either by an affidavit sworn, or affirm-
 " ation made before a master in Chancery, ordi-
 " nary, or extraordinary, or before the commission-
 " ers *viva voce*, (which oath or affirmation, they are
 " hereby respectively authorised to administer,) and
 " in case of creditors residing in foreign parts, such
 " affidavits or solemn affirmations, to be made before
 " a magistrate, where the party shall be residing,
 " and

" and shall, together with such creditor's letter of
 " attorney, be attested by a notary publick, to vote
 " in the choice of assignees of such bankrupt's
 " estate and effects, in the place and stead of such
 " creditor. And the commissioners, or the major
 " part of them, authorised, shall assign every such
 " bankrupt's estate and effects, unto such person or
 " persons as the major part in value of such credi-
 " tors, according to the several debts then proved,
 " shall choose, as aforesaid. And the assignee or
 " assignees so chosen, shall be obliged to keep one
 " or more distinct book or books of account, where
 " he or they, shall duly enter, all sum and sums of
 " money or other effects, which he or they shall
 " have got in, or received, out of the said bank-
 " rupt's estate; to which book or books of account,
 " every creditor who shall have proved his debt,
 " shall, at all seasonable times, have free resort,
 " and inspect the same, as often as he shall think
 " fit."

5 G. 2. c. 30. s. 27. " No creditor or any other
 " person, for or on the behalf of any creditor, shall
 " be permitted to vote in such choice of assignees,
 " whose debt or the debt of the person so authorising
 " him to vote shall not amount to the sum of 10 l.
 " or upwards."

The 5 G. 2. c. 30. s. 38. enacts, " That the
 " commissioners, or the major part of them, as
 " often as they shall see cause, for the better pre-
 " serving and securing the bankrupt's estate, may,
 " immediately appoint one or more assignee or
 " assignees, of the estate and effects, or any part
 " thereof; which assignee or assignees, or any of
 " them

“ them may be removed, or displaced, at the meet-
“ ing of the creditors so to be appointed as afore-
“ said, for the choice of assignees, if they, or the
“ major part, in value of them, whose debts re-
“ spectively amount to ten pounds, or upwards,
“ then present, and of such persons duly authorised,
“ as aforesaid, as shall think fit. And such assignee
“ or assignees as shall be so removed, and displaced,
“ shall deliver up and assign, all the estate and
“ effects of such bankrupt, which shall have come
“ to his or their hands, or possession, or which
“ shall have been assigned by the said commissioners
“ as aforesaid, unto such other assignee or assignees,
“ who shall be so chosen by the creditors, as afore-
“ said, and all the estate and effects of the bank-
“ rupt, which shall be delivered up, or assigned,
“ shall be to all intents and purposes, as effectually
“ and legally vested in such new assignee or as-
“ signees, as if the first assignment had been made
“ to him or them by the said commissioners. And
“ if such first assignee or assignees shall refuse or
“ neglect, by the space of ten days next after notice
“ given, of the said choice of such new assignee or
“ assignees, and of his and their consent, to accept
“ such assignment, signified to the first assignee or
“ assignees, by writing under his or their hand
“ or hands, to make such assignment, and delivery
“ as aforesaid, every such first assignee or as-
“ signees, shall respectively forfeit the sum of two
“ hundred pounds, to be divided, and distributed
“ amongst the creditors, toward satisfaction of their
“ debts, in such manner as the estate of the bank-
“ rupt is or ought to be divided, and distributed, and
“ to

“ to be recovered by action of debt, bill, plaint or
 “ information, in any of his Majesty’s courts of
 “ record at *Westminster*, by such person or persons,
 “ as the major part of the commissioners shall ap-
 “ point to sue for the same, with full costs of suit,
 “ wherein no privilege, protection, or wager
 “ in law, or more than one imparlance shall be
 “ allowed.”

5 G. 2. c. 30. s. 31. reciting, “ Whereas it
 “ may be found necessary, that as well assignments
 “ of bankrupts estates, already made by commis-
 “ sioners, as assignments hereafter to be made,
 “ pursuant to the choice of creditors, should be va-
 “ cated, and a new assignment or assignments be
 “ made, of the debts and effects unreceived, and
 “ not disposed by the then assignees to other persons,
 “ to be chosen by the creditors as aforesaid. Enacts,
 “ that the Lord Chancellor, Lord Keeper, or Com-
 “ missioners for the custody of the Great Seal of
 “ *Great Britain*, for the time being, upon petition
 “ of any creditors, to make such order therein, as
 “ he or they shall think just or reasonable. And
 “ in case a new assignment shall be ordered to be
 “ made, as aforesaid, then such debts, effects, and
 “ estate of such bankrupt, shall be thereby effect-
 “ ally and legally vested, in such new assignees; and
 “ it shall, and may be lawful, for him, and them
 “ to sue for the same, in his, or their name or
 “ names, and to discharge any action or suit, or
 “ to give any acquittance for such debts, as effec-
 “ tually to all intents and purposes, as the assignee
 “ or assignees in the former assignment, might have
 “ done in case no new assignment had been made.

“ And

“ And the said commissioners shall cause public
 “ notice to be given in the two *London Gazettes* that
 “ shall immediately follow the removal of such
 “ assignee or assignees, and the appointment of such
 “ other assignee or assignees as aforesaid; that such
 “ assignee is or are removed, and such other as-
 “ signee or assignees appointed in his or their stead,
 “ and that such persons as are indebted to the said
 “ bankrupt's estate, do not pay such debts to such
 “ assignee or assignees as shall be removed as
 “ aforesaid.”

5 G. 2. c. 30. s. 34. “ It shall and may be
 “ lawful, to and for the assignee or assignees of any
 “ bankrupt's estate and effects, by and with the
 “ consent of the major part, in value of the bank-
 “ rupt's creditors, who shall have duly proved their
 “ debts under such commission, and who shall be
 “ present at any meeting of the said creditors pur-
 “ suant to notice to be for that purpose given in the
 “ *London Gazette* to submit any difference or dis-
 “ pute between such assignee or assignees, and any
 “ person or persons whatsoever, for or on account
 “ or by reason or means of, any matter, cause or
 “ thing whatsoever, relative to such bankrupt or
 “ bankrupts, his, her, or their estate, and effects,
 “ to the final end and determination of arbitrators
 “ to be chosen by the said assignee or assignees, and
 “ the major part, in value of such creditors, and
 “ the party or parties with whom they shall have
 “ such difference, and to perform the award of
 “ such arbitrators, or otherwise to compound and
 “ agree the matters in difference and dispute be-
 “ tween them, in such manner as the said assignee
 “ or

“ or assignees, with such consent as aforesaid shall
 “ think fit, and can agree; and the same shall be
 “ binding to all the creditors of the said bank-
 “ rupt; and the assignees are hereby indemnified
 “ for what they shall fairly do according to the
 “ direction aforesaid.”

5 G. 2. c. 30. s. 35. “ Any assignee or assignees
 “ made and chosen as aforesaid, is and are im-
 “ powered by and with the consent of the major
 “ part of the bankrupt’s creditors, in value, who
 “ shall be present at a meeting to be had for that
 “ purpose, of which public notice shall be given in
 “ the *London Gazette* to make composition with
 “ any person or persons, debtors or accountants to
 “ such bankrupts, where the same shall appear ne-
 “ cessary and reasonable, and to take such reason-
 “ able part as can, upon such composition be gotten
 “ in full discharge of such debts and accounts.”

5 G. 2. c. 30. s. 38. “ No suit in equity shall
 “ be commenced by any assignee or assignees, with-
 “ out the consent of the major part in value of the
 “ creditors of such bankrupt, who shall be present
 “ at a meeting of the creditors pursuant to notice
 “ to be given in the *London Gazette* for that pur-
 “ pose.”

5 G. 2. c. 30. s. 32. “ Before the creditors shall
 “ proceed to the choice of assignees of any bank-
 “ rupt’s estates, the major part in value of the said
 “ bankrupt’s creditors then present, shall if they
 “ think fit, direct, in what manner, how, and with
 “ whom, and where the monies arising by, and to
 “ be received from time to time, out of the bank-
 “ rupt’s estate, shall be paid in and remain until
 “ the

“ the same shall be divided amongst all the creditors
 “ as by this act is directed ; to which rule and
 “ direction, every such assignee and assignees afore-
 “ said to be chosen, shall conform as often as 100%.
 “ shall be got in, and received from such bank-
 “ rupt's estate, and shall be and are hereby indem-
 “ nified for what they shall do, in pursuance of
 “ such direction of the said creditors.”

1 Atk. 70.

The commissioners at the choice of assignees are not critically to examine into the debt, but to admit creditors upon their oath for what they swear is due to them, as they will still be liable to an account afterwards, and it would be extremely hard to exclude persons who perhaps may be the greatest creditors, till the account is determined, which may be the work of several years ; and as it may be necessary and convenient that assignees should immediately be chosen. But this must be understood where no obvious objection appears to the debt, for when that happens to be the case, it is the constant practice only to suffer the creditor to claim till he makes out his demand to the satisfaction of the commissioners.

1 Atk. 71.

The commissioners, immediately after declaring the party bankrupt, are to appoint a time and place for the choice of assignees, because it may be necessary to take care of the bankrupt's estate and effects ; nor is it necessary that all the creditors should have an opportunity of voting in the choice of assignees, for if some of them are abroad, that will not, without very particular circumstances, be any reason for the court to direct the creditors to proceed to a new choice, in order to give such creditor an opportunity of voting. If a practice of that nature was to prevail,

vail, the choice must be postponed to a great length of time, which would be directly contrary to the act of parliament, but the true rule is that the assignees ought to be continued, unless the creditor can shew there is some objection with regard to the substance or integrity of the person who is chosen assignee.

Thus, upon an application to the court for new assignees, upon a suggestion in the petition, that the time was too short which the commissioners had appointed for the choice of assignees, the person having been found a bankrupt only on the 21st of *May*, and the sitting for the choice of assignees was on the 1st of *June*. That the debts proved at the time of the choice amounted only to 2075*l.* and that the petitioners living abroad, could not, in so short a time, send over letters of attorney to vote in the choice, though their demands on the bankrupt's estate would not be less than 11,000*l.* that the assignee already chosen was a hatter, and not to be supposed conversant in foreign affairs, in which the bankrupt's concerns chiefly lie.

For the petitioners a case, *Ex parte Anderson*, in 1724 was cited, which was heard by Lord *Macclesfield*, who ordered a new choice of assignees, on a suggestion that a great number of creditors could not possibly be present at the first choice.

Lord *Hardwicke* desired that precedents might be searched, to see if they could find any case where it had been ordered that creditors should proceed to a second choice, upon a suggestion merely that some of them live remote from *London*, or are out of *England*.

Ex parte
Grenier
1 Atk. 91.

land. But no such case being found, his lordship said it would be a dangerous rule, and therefore that the petition must be dismissed, and the assignee continued who is already chosen.

The statute having directed that the choice of assignees shall be by the major part in value of the creditors, one creditor if his debt be sufficiently large may choose himself assignee.

The statute authorizing commissioners immediately to appoint an assignee, and to make a provisional assignment to him, does not oblige them to do so, and indeed this practice has of late years been disused, as calculated to create expence without answering any good end, except where the bankrupt is indebted to the crown and an extent is apprehended. When such appointment is thought necessary, the commissioners may, at their discretion, assign the whole or part of the bankrupt's effects; for the words of the statute are in the disjunctive, *immediately to appoint one or more assignee or assignees of the estate or effects, or any part thereof.*

If the assignees misbehave in the trust reposed in them, they may be removed by petition to the Lord Chancellor on the behalf of a creditor. So if an assignee himself becomes bankrupt, that will be a sufficient ground for his removal. Or if the commissioners act improperly at the choice of assignees. When an assignee is removed, he must join with the old assignee and the commissioners in making an assignment to the new assignee. The common practice where only one assignee is removed, is to make him join with his companion in assigning to the new assignee and to the one retained, whereby a man

is

1 Atk. 97.
7 Vin. Abr. 77.

made to convey to himself, which appears absurd.

The most feasible plan seems for the old assignees to convey to a third person, in trust, that he should immediately reconvey to the old and new appointed assignee, and I have inserted a conveyance of that nature in the appendix.

Where an assignee is removed on account of his own bankruptcy, Lord Hardwicke was of opinion that he and his assignees must join with the commissioners in executing an assignment to the new assignees.

Ex parte
Newton
1 Atk. 97.

Assignees are in the nature of trustees, and where they employ an agent to receive or pay money, and he abuses this confidence, an assignee cannot be distinguished from any other trustee, who, if his agent deceive him, must answer over to the *cestui que trust*. For the chief consideration of the creditors in the choice of assignees is certainly the ability of the persons, that they may be responsible for the sums they receive from the bankrupt's estate.

1 Atk. 83. 90.

But the negligence of one assignee shall not hurt another joint assignee, where he is not at all privy to any private and personal agreement entered into by his brother assignee.

1 Atk. 83. 90.

If an assignee becomes bankrupt, and has applied any of the money received by him in that capacity, to his own use, the commissioners are to be considered as specialty creditors, because the assignees executed a counterpart of the assignment to them, and the agreement being under hand and seal, makes it in the nature of a specialty debt, and therefore they may come upon his real estate.

Primrose v.
Bromley
1 Atk. 89.

Ex parte
Whitchurch
1 Atk. 91.

3 Atk. 107.

2 Atk. 253.

Creditors cannot give a general power to assignees to prosecute suits or submit matters to arbitration; but the assignees must have a meeting of creditors, upon notice given for that purpose in the *London Gazette* to consider of each particular suit, or each particular case for arbitration before they can proceed in them. But if some of the creditors do not think proper to attend the meeting, it is their own fault, and those who are present have a right to bind the whole, by the opinion of the majority in value at the meeting.

Though the acts of parliament relating to bankrupts do only direct the assignees to advertise a meeting of creditors in relation to commencing suits, and for particular purposes, yet the assignees are very much to be commended for advertising meetings upon any other extraordinary occasion that concerns the creditors, because where they are numerous, there is no way so good to collect the whole body together.

It is the duty of the assignees to make a dividend as early as possible after the time given by the statute, for creditors to come in and prove their debts. And if they neglect making a dividend, and keep the money in their own hands, they will be liable to interest for it.

Ex parte Lane
1 Atk. 90.

Thus, *Wood* an alehouse-keeper, in *Holborn*, became a bankrupt in the year 1729, and a commission being taken out against him at that time, *Fitchet* and *Kirke* were duly chosen assignees, one the landlord and the other the brewer to the alehouse. In order to continue the trade, they put one *Wadelow* into

into the house, and allowed him to make use of the bankrupt's goods upon giving a bond for 100*l.* the value set upon them by the appraiser under the commission. *Wadlow* was made a responsible man till the year 1738, and then absconded.

Lord *Hardwicke* said, where the effects of a bankrupt are so inconsiderable, that no one creditor may think it worth while to call upon the assignees for a dividend, yet if they neglect to make a dividend in proper time, and are making a private advantage to themselves of the bankrupt's effects, he should always charge such assignees with interest. His lordship ordered *Kirke* and the executors of *Fitchet* to account in moieties for the value of the goods, according to the appraisement, and to pay interest for them at the rate of 4 per cent. to be computed from a twelvemonth after the execution of the assignment.

And the same question as to interest arose in a case where a commission issued in 1766, against *Beale* and others, co-partners; and *Townsend*, *Russel* and another were chosen assignees. *Beale* and his partners having carried on the negotiation of accommodation bills, to a very large amount with several persons who were also bankrupts, the assignees of *Beale* deferred proceeding under the commission, in order that the several holders of the bills might prove their debts and receive dividends under the other commissions before they made any claim on the estate of *Beale*, &c. In fact no dividend was ever made. The clerk of the commission was dead and all the papers lost. *Townsend* had received considerable part of the bankrupt's effects. *Russel* had also received some small part, but he died in 1773.

Treves v.
Townsend
In Canc.
Nov. 17. 1783.

In 1782 the creditors renewed the commission, and this bill was brought by the creditors against *Townsend* and the executors of *Russel*, for a discovery of the several facts, and for an account of the money received by them, &c.

It appeared by *Townsend's* answer, that he kept the money he received as assignee in common with his own at his banker's; but he swore that he generally had there more than the amount of such receipts, and the only question in the case was, whether *Townsend* and the executors of *Russel* should be charged with interest for the money kept in their respective hands?

Lord *Loughborough*—As to *Russel's* executors, they cannot be looked upon in the light of assignees, and as executors, are not required to pay till called upon, and though the plaintiffs might charge *Russel's* estate in respect of the money retained in his hands in his life-time, yet as the sum is comparatively small, it is scarcely an object. But with regard to *Townsend*, I was surprised to hear it argued that the assignees were not to make a dividend, or to take an active part in settling the bankrupt's affairs unless called upon by the creditors. And as to the idea of discouraging honest men from taking upon themselves the office of assignees, no honest man can ever have any difficulty. The effect of giving into such doctrine would be, that it would be canvassed for, as an office, and no honest man would ever be appointed. There is nothing so likely to make the bankrupt laws reprobated or to bring about their annihilation. This is the grossest case that imagination can make. The assignees only excuse is, that they would not
make

make a dividend because they were so very negligent. They never called upon the clerk of the commission, and he is now dead, and all the papers are lost. And the expence of a suit is brought upon the estate by their negligence. Now what ground is there for not charging them with interest? The money being mixed by *Townshend* with his own, it is just as clear a profit has accrued, as if it had been specifically placed out. *Townshend* was employed in trade, and knew how to make the most of money. Money is part of a merchant's stock in trade. A circulating capital on which profit arises. The sum in the banker's hands was fluctuating, and he must have been an unthrifty merchant if he did not make great profit of the money by discounting notes, &c. Since 1768 the sum of 1936 *l.* has been so employed by him. If the court should suffer him to do this, when the very nature of the trust reposed in him, required that he should not keep it in his hands, when will there be a sufficient ground to charge him? *Townshend* must therefore pay the interest at 5 per cent. and pay all the costs of this suit. And also all the subsequent costs arising from the enquiry in the Master's office, which has been occasioned by his neglect.

The creditors and assignees of a bankrupt stand in his place and are subject to the same equity, and bound by all acts fairly done by him, notwithstanding they gain the legal estate. But this rule does not hold in every case; for where there is a voluntary conveyance by a bankrupt, the court may carry it into execution against the bankrupt himself, but not against his assignees.

1 Atk. 7
2 Atk. 562.
Contra. 2 Vern.
194.

Tyrrell v. Hope
3 Ark. 558.

If upon a marriage the husband makes an agreement with his wife to hold an estate in trust for her, the assignees must be trustees in the same manner as the husband was. As where the wife before her marriage with *John Tyrrell* was seized in fee, or her mother *Mrs. Stanton* was, of an estate in *Berkshire*, and in consideration of the intended marriage, and of 1500*l.* paid to *Mr. Tyrrell* as her marriage portion, it was agreed that the estate should be settled previous to the marriage, so as that one moiety might be enjoyed by the plaintiff's mother for her life, and after her decease by the plaintiff, or her trustees, for her sole and separate use, exclusive of her husband, and that she should receive the rents and profits during her husband's life. And that as well the said moiety after the plaintiff's decease, as the other moiety should be settled upon such trusts as the plaintiff by any deed in her life-time or by will should appoint.

Mr. Tyrrell, the intended husband, undertook to procure deeds to be drawn pursuant to the agreement, but when the deeds were reading over to the plaintiff in order for execution, she observed there was a mistake, for that the moiety of the premises limited to her mother for life, was after her decease limited to the use of *Mr. Tyrrell* for life, and not to her separate use as had been agreed; and she refused to execute unless the mistake was rectified. In order to do this it was then proposed by the trustees, that *Mr. Tyrrell* should give a note or writing under his hand, that the plaintiff should take and receive one moiety of the estate after her mother's death, for her sole and separate use, according to the agreement

as

as if the same had been so settled by the release; and thereupon Mr. Tyrrell, previous to the execution of the deeds, gave the plaintiff a note in writing to the purpose aforesaid and delivered it to the trustee.

The marriage was had shortly after, and upon the 8th of July 1739, the mother died, and on the 4th of July 1740 a commission of bankruptcy issued against Mr. Tyrrell, and he being found a bankrupt, Mr. Hope and others were chosen assignees, and being got into receipt of all the rents of this moiety, refused to let the plaintiff receive them, or to make any settlement for securing the receipt thereof to her, pursuant to the agreement before her marriage.

Upon which this bill was brought, that a moiety of the estate might be assured to the plaintiff, for her sole and separate use.

The Master of the Rolls said, taking all the circumstances together, as she would have been intitled to the relief she prays against the husband, she is equally intitled to relief against the assignees, but without costs, as it was their duty to bring a case so circumstanced before the court.

On a petition, where it appeared that the petitioner in 1751 married Coysegame, who became a bankrupt, and at the time of his last examination, he delivered up, with the rest of his estate, a bond which was given to A. in trust to secure the payment of an annuity of 40*l.* a year to the petitioner, during the joint lives of Sir Edward Smith and the petitioner.

She brought a portion of 500*l.* to the bankrupt in marriage, and had nothing to subsist on but the annuity, and prayed by her petition that the assignees may

Ex parte
Coysegame.
1 Atk. 192.

may deliver the bond to her trustee, and that the arrears of her annuity, and all future payments may be made to her.

The Lord Chancellor ordered accordingly, considering the creditors as standing in the place of the husband, and not intitled any more than he would have been in case he was no bankrupt to the annuity without making a provision for her.

In another case there was a covenant in the bankrupt's marriage settlement, that he should pay to the trustees to the uses of the settlement 6000*l.* by instalments, viz. 1000*l.* at the end of seven years, and 1000*l.* *per ann.* afterwards, till the whole should be paid, so that the sum of 6000*l.* should be paid in twelve years, if the bankrupt should so long live; if he should not, then the whole was to be paid within one year after his decease, if the wife or any child of the marriage should be then living, if not, then 3000*l.* only was to be paid.

The husband under the settlement took a life interest in several annuities belonging to the wife, and also in some 4 *per cent.* annuities of the year 1780. The husband became bankrupt just before the end of the first seven years. This was a petition to be admitted to prove the 6000*l.* as a debt under the commission.

The Lord Chancellor said it was a question, whether these were not mutual demands, the husband having rights against the trustees, as to which the assignees must stand in his place. As to the 3000*l.* that would certainly become due, the only contingency was, whether there would or would not be 3000*l.* more, therefore he ordered that the trustees should

Ex parte
Mitford,
Brown.

should be admitted to prove the 3000 l. and the assignees would have a right to claim whatever the bankrupt could claim against the trustees, so that there must be a rebate on the value of those funds.

Where a mortgage is made on a lease pledged by a bankrupt, equity will supply a defect in the conveyance against the assignees.

Russel v.
Russel.
Brown.

Richard Wheeler being seized of a copyhold estate, borrowed 400 l. of the plaintiff in 1698, and surrendered into the hands of two customary tenants the copyhold estate in question, to be presented at any court after September 1699, defeasible on paying the 400 l. and interest. The mortgagor paid the interest for four years together; but no care was taken to get the surrender presented, and in the mean time the mortgagor became a bankrupt, and died intestate and insolvent.

Taylor v.
Wheeler
2 Vern. 564.

After his death the surrender was tendered, but the homage refused to present it, because by the custom of the manor confirmed by act of parliament, all surrenders were to be void if not presented in twelve months after they were made.

The bill was brought against the assignees and the heir to be relieved, and to supply the defect of the surrender not being presented in time.

The Lord Keeper having been attended with the precedent of *Burgh* and *Francis* where the court had supplied the defect of livery against judgment creditors, declared that though upon the hearing of the cause, he inclined not to relieve the plaintiff, because through his neglect of getting the surrender presented, the creditors might be possibly drawn in to give the greater credit to the bankrupt; and the statute of bankrupts provides, " if goods remain in
" the

"the hands of the bankrupt, that they shall be liable to the creditors; and may be sold as part of the bankrupt's estate, notwithstanding any bill of sale, &c." yet it was too hard to extend a penal law in a court of equity to the prejudice of the plaintiff, who was in the nature of a purchaser by a defective conveyance, and had contracted and agreed for a security on those lands, which the other creditors had not, but lent to the bankrupt upon a general credit, and could therefore be intitled to no more than what properly was the bankrupt's. And against the bankrupt himself the plaintiff had a plain equity, and he must have been decreed to have supplied his defective conveyance.

Ex parte
Cottrell
Cowp. 742.

A case was sent out of Chancery for the opinion of the Court of King's Bench, stating that *Catharine Essex*, single woman, on or about the 25th of June, 1766, went to live with and was hired by *Richard Eaves*, to serve him from that day for the space of one year. The said *Richard Eaves* was to pay the said *Catharine Essex* 5*l.* 5*s.* for such service. After the said *Catharine Essex* had lived with the said *Richard Eaves* for about five months, he, by promising frequently to marry her, prevailed on her to permit him to have carnal knowledge of her. And she continued in his service for eight years from the said 25th of June, 1766, and during that time had two children by him, one of which died soon after it was born, and the other is now living. She never received any wages whatever from the said *Richard Eaves* for such service, though she often requested him to pay her, and he as often promised to pay her. That in June 1774, the said *Richard Eaves* being

upon

upon the point of marriage with a person of large fortune, and wanting to remove the said *Catharine Essex* and the child from him, he with the consent of the said *Catharine Essex*, intimated his wish to *Joseph Cottrell*, blacksmith, and treated with him to marry her; and promised that if he would marry her, and settle a freehold house and land which he was seized of in fee, of the yearly rent of 15 *l.* and upwards upon the said *Catharine Essex* for her life, and take care of the child, the said *Richard Eaves* would give the said *Joseph Cottrell* 42 *l.* for the said *Catharine Essex*'s eight years wages, and a bond for the payment of 400 *l.* by instalments.

Cottrell accordingly settled the estate, and *Eaves* entered into a bond in the penal sum of 800 *l.* conditioned for the payment of 400 *l.* to *Cottrell* by instalments.

On the 29th of September 1774, *Joseph Cottrell* married *Catharine Essex*, and has ever since maintained the child.

On the 6th of March 1775, before any payment on the bond became due, *Eaves* was declared a bankrupt.

Lord Mansfield said, this is a good consideration between the parties. It is a stipulation between them in consideration of marriage. The one has performed his part, and married the woman. The other is therefore bound to perform his. There is no ground to impute any fraud in the case. And the court afterwards certified that the petitioner *Joseph Cottrell* is intitled to come in as a creditor under the commission of bankruptcy issued against *Richard Eaves*.

Where

Ex parte Skip
2 Vesey. 489.

Where the bankrupt has borrowed money on an usurious contract, the assignees have a right to insist that the whole is void, and unless the assignees and creditors submit to pay what is really due, the court cannot order it.

Where the bankrupt himself from the circumstances of the case would be considered as trustee for another, his assignees will be looked upon in the same light.

Ex parte Byas
1 Atk. 324.

Mrs. *Devereux* being indebted to *Martin Kankell* in 71*l.* for goods sold on the 28th of August 1734, gave him a promissory note. *Kankell* being indebted to *Byas* in 92*l.* 19*s.* delivered to him Mrs. *Devereux*'s note, that he might receive the money due thereon in part of his debt, and took of him a receipt for the same in the words following, "Received the 20th December 1734, a bill for 71*l.* which when paid will be on account for *Thomas Byas*."

The 19th of March 1734, a commission of bankruptcy issued against *Kankell*. Mrs. *Devereux* died in 1735.

Kankell not having indorsed or assigned the said note to *Byas*, the assignees applied to Mrs. *Devereux*'s executor and received the 71*l.* of him, on giving security to indemnify him.

Byas proved his whole debt of 92*l.* 19*s.* under *Kankell*'s commission, but at the same time insisted on having the benefit of the note, and that the assignees ought not to have received the 71*l.* and that the same having been so received by them in prejudice to him he is intitled to the money.

Lord

Lord *Hardwicke* said he was of opinion that the assignees of *Kankell's* estate, under the commission, ought to be considered as trustees for *Byas*, with respect to the sum of 71*l.* which they received on account of the note given by Mrs. *Devereux*, and ordered them to pay the 71*l.* to *Byas*.

The statute of limitations will run against the assignees from the time of the original promise to the bankrupt. Comb. 70.

As where in an action brought against the defendant by an assignee, he pleaded the statute of limitations. *Grey v. Bendish* Cases in Equity 171.

The court resolved that the statutes of bankrupts transfer the right to the assignee, but it is no more than the old right which the bankrupt had before he had committed any act of bankruptcy, and therefore the assignee must take it in the same plight and condition as the bankrupt himself had it. And that the statute of limitations was a bar.

Where a creditor before bankruptcy agrees to take less than his debt, so that it be paid precisely at the day, and the debtor fails of payment, he cannot be relieved; and if the debtor becomes bankrupt, the assignees will not be intitled to bind the creditor by his composition, but he has a right to prove his whole debt, 2 Atk. 522.

C H A P. XIII.

Of the Commissioners Assignments.

BY the 34 & 35. H. 8. c. 4. "The Lord Chancellor of England or Keeper of the Great Seal, the Lord Treasurer, the Lord President, Lord Privy Seal, and other of the King's most honourable Privy Council, the Chief Justices of either Bench for the time being, or three of them at the least, upon every complaint made to them in writing by any parties grieved, shall have power and authority, to take by their discretions such orders and directions as well with the bodies of such offenders as with their lands, tenements, fees, annuities, and offices which they have in fee simple, fee tail, term of life, term of years or in the right of their wives as much as the interest, right and title of the said offenders shall extend to be, and may then lawfully be departed with, and to cause the said lands, &c. and offices to be appraised, and sold for satisfaction and payment of the said creditors."

By the 13. Eliz. c. 7. s. 2. "The commissioners, or the most part of them, shall have full power and authority to take, by their discretions, such order and direction with the body of such person whosoever he may be had, either in his house, sanctuary, or elsewhere, as well by imprisonment of his body, as also with all his lands, tenements, hereditaments, as well copy or customary

" may hold as freehold, which he shall have in his
 " right before he became bankrupt, and also with all
 " such land, tenements and hereditaments as such
 " person shall have purchased or obtained for money
 " or otherwise, jointly with his wife, chil-
 " dren or child, to the only use of such offender, or
 " of or for such use, interest, right or title, as such
 " offender then shall have in the same, which he
 " may lawfully depart withal, or with any person of
 " trust to any such use of such offender; and also with
 " his money, goods, chattels, wares, merchandizes,
 " and debts, wheresoever they may be found or
 " known; and cause the said lands, tenements, fees,
 " annuities, offices, goods, chattels, wares, mer-
 " chandizes and debts to be searched, viewed,
 " rented, and appraised to the best value they may,
 " and by deed indented, inrolled in one of the
 " Queen's majesty's courts of record, to make sale of
 " the said lands, tenements and hereditaments, and
 " of all deeds, writings and evidences, touching only
 " the same belonging to such offender or debtor;
 " and also of all fees, annuities, offices, goods and
 " chattels, or otherwise to order the same for true
 " satisfaction and payment of the said creditors, that
 " is to say, to every of the said creditors a portion,
 " rate and rate like, according to the quantity of
 " his or their debts. And that every direction,
 " order, bargain, sale, and other things done by the
 " said persons so authorized as is aforesaid, in form
 " aforesaid, shall be good and effectual in the law
 " to all intents, constructions and purposes against
 " the said offender or debtor, his wife or heir, child
 " and children, and such person as by such joint
 " purchases

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“ purchases with the said offender as is aforesaid,
 “ have or shall have any estate or interest in the pre-
 “ mises, and against all other persons claiming by,
 “ from, or under such offender or debtor, by any
 “ act or acts had, made, or done, after any such per-
 “ son shall become bankrupt as is aforesaid, and also
 “ against the lands of the manors whereof the said
 “ copyhold or customary lands be holden, their
 “ heirs, &c.”

“ Provided always that all and every person to whom
 “ any such sale of copyhold or customary lands or tene-
 “ ments shall be made, shall before such time as they
 “ shall enter or take any profit of the same lands or te-
 “ nements agree and compound with the lords of the
 “ manors of whom the same shall be holden for such
 “ fines or incomes as heretofore hath been most usual
 “ and accustomed to be yielded or paid therefore.
 “ And that upon every such agreement or compo-
 “ sition the said lords, for the time being, at the
 “ next court to be holden at or for the said manors,
 “ shall not only grant unto the said vendee, upon re-
 “ quest, the same copy or customary lands or tene-
 “ ments, by copy of court roll of the same manors
 “ for such estate or interest as to them should be so
 “ sold, and reserving the antient rents, customs, and
 “ services, but also in the same court admit them
 “ tenants of the same copy or customary lands as
 “ other copyholders.”

“ And such of the said commissioners as shall
 “ put the said commission in execution, shall, upon
 “ lawful request to them made by the said bankrupts,
 “ not only make a true declaration to the said bank-
 “ rupts, of the employing and bestowing of their said
 “ lands,

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“lands, tenements, offices, fees, goods, chattels and
“debts, so paid and satisfied to their said creditors,
“but also make payment of the overplus of the same,
“if any such shall be, to the said bankrupts, their ex-
“ecutors, administrators and assigns.”

“1 Jac. 1. c. 15. s. 5. If any person which here-
“after is or shall be a bankrupt, shall convey or pro-
“cure or cause to be conveyed to any of his children
“or other person or persons any manors, lands, te-
“nements, hereditaments, offices, fees, annuities,
“leases, goods, chattels, or transfer his debts into
“other men's names, except the same shall be
“purchased, conveyed or transferred, for or upon
“marriage of any of his children, both the parties
“married being of the years of consent, or some va-
“luable consideration, it shall be in the power and
“authority of the commissioners on this behalf to
“be appointed or the major part of them, to bar-
“gain, sell, grant, convey, demise, or otherwise to
“dispose thereof, in as ample a manner as if the said
“bankrupt had been actually seized or possessed
“thereof, or the debts were in his own name, of the
“like estate or interest, to his or their own use at
“such time as he became bankrupt. And that
“every such grant, bargain, sale, conveyance, and
“disposition of the said commissioners, or of the
“greater part of them, shall be good and available,
“to all intents, constructions and purposes in the
“law, against the offender or offenders, his heirs,
“executors, administrators and assigns, and such
“children and persons as shall be subject to this sta-
“tute, and against all other persons claiming by,
“from, or under such offender, or such said other

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persons to whom such conveyance shall be made by the said bankrupt, or by his means or procurement."

"1 Jac. 1. c. 15. s. 13. The commissioners of bankrupts, or the greater part of them, shall have power to grant and assign, or otherwise to order or dispose of all or any of the debts due, or to be due to, or for the benefit of the said bankrupt, by what person or persons soever, or in what manner and form soever, to the use of the creditors of the said bankrupt; and the same grant, assignment, or disposition of the said debts in form aforesaid to be made by the said commissioners, or the greater part of them, shall so vest the property right and interest of the said debts in the person of him to whom it shall be granted, assigned, or ordered by the said commissioners, or the greater part of them, as fully to all intents and purposes as if the said bill, bond, bonds, statutes, recognizances, judgment or contract whereupon the said debts or deeds shall arise or grow, had been made to or with, or for the said person to whom the same shall be so granted, assigned or disposed by the said commissioners, and after such grant, assignment or disposition made of the said debts, neither the bankrupt, nor any other to whom any such debts shall be due, shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as the debt of the bankrupt, or such said other person to whom the same shall be due by any other person, according to the custom of the city of London, or otherwise; but the party to whom the same debt shall be

"so

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“ so assigned shall have like remedy to recover the
“ same as fully and lawfully in the name of the
“ person to whom the same shall be so granted,
“ assigned or ordered by the said commissioners in
“ all respects and purposes, as the party himself might
“ have had.”

“ 21. *Fac. 1. c. 19. s. 10.* If it shall happen, any
“ the lands, tenements goods, chattels, debts, or
“ other estate of any bankrupt be extended after such
“ time as he is become a bankrupt by any person,
“ under colour or pretence of his being an account-
“ tant, or any way indebted unto our sovereign
“ Lord, the King's Majesty, then it shall be
“ lawful, to and for the said commissioners to exa-
“ mine upon oath, whether the said debt was due
“ to such debtor or accountant upon any bargain or
“ contract originally made betwixt such accountant
“ and the said bankrupt, the said debtor or account-
“ ant or his servants, and if such bargain or con-
“ tract was originally made to and with any other
“ person than the said debtor or accountant, or for the
“ use and trust of any other person; then it shall and
“ may be lawful to and for the said commissioners, or
“ the greater part of them, to order and dispose of
“ all such lands, tenements, hereditaments, goods,
“ chattels, and debts so extended as aforesaid, to and
“ for the use of the creditors which shall seek relief
“ by the said commission. And that the order and
“ disposition of the said commissioners, or the
“ greater part of them, shall be good and available
“ against the said extent, and against all persons
“ claiming from, by, or under the said extent. And
“ such persons to whom the said lands, tenements,
“ goods

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"goods and chattels so extended, shall be bargained,
 "sold, granted or assigned by the commissioners
 "aforesaid, or the greater part of them, shall have
 "good remedy to have, demand and recover the
 "same, against such person and persons who shall
 "detain the same."

"21 Jac. 1. c. 19. s. 11. If any person shall
 "become bankrupt, and at such time as they shall
 "so become bankrupt, shall, by the consent and per-
 "mission of the true owner and proprietary have in
 "their possession, order and disposition, any goods or
 "chattels whereof they shall be reputed towners,
 "and take upon them the sale, alteration or disposition
 "as owners; that in every such case the said com-
 "missioners, or the greater part of them shall have
 "power to sell and dispose the same, to and for the
 "benefit of the creditors which shall seek relief by
 "the said commission, as fully as any other part of
 "the estate of the bankrupt."

"21 Jac. 1. c. 19. s. 12. The said commis-
 "sioners, or the greater number of them, shall have
 "power, by virtue of this act, by deed indented and
 "inrolled within six months after the making there-
 "of, in some of his Majesty's courts of record at
 "Westminster, to grant, bargain, sell and convey any
 "manors, lands, tenements or hereditaments,
 "whereof any bankrupt is or shall be in any ways
 "seised of any estate in tail, in possession, reversion or
 "remainder, and whereof no reversion or remainder
 "is or shall be in the King's Majesty, his heirs and
 "successors, of the gift or provision of his Majesty
 "his progenitors, his heirs or successors, to any per-
 "son or persons, for the relief and benefit of the
 "creditors

“creditors of all such bankrupts, and that all and every
 “such grants, bargains, sales and conveyances shall be
 “good and available in the law to such persons and
 “their heirs against the said bankrupts, and against
 “all and every the issues of the body of such bank-
 “rupts, and against all and every person claiming any
 “estate, right, title or interest, by, from, or under the
 “said bankrupts, after such time as such person shall
 “become bankrupt, and against all and every other
 “person whatsoever, whom the said bankrupt, by
 “common recovery, or other way or means, might
 “cut off or debar from any remainder, reversion,
 “rent, profit, title, or possibility into or out of any
 “the said manors, lands, tenements or heredita-
 “ments.”

“21 Jac. 1. c. 19. § 13. If any person that now
 “is, or hereafter shall become a bankrupt, have here-
 “tofore granted, conveyed or assigned, or shall at
 “any time hereafter grant, convey or assign any
 “lands, tenements, hereditaments, goods, chattels,
 “or other estate unto any person upon condition or
 “power of redemption at a day to come by payment
 “of money, or otherwise; it shall and may be lawful
 “to and for the said commissioners, or the greater
 “part of them, before the time of the performance
 “of such condition, to assign and appoint under
 “their hands and seals, such persons as they shall
 “think fit to make tender or payment of money or
 “other performance according to the nature of such
 “condition as fully as the bankrupt might have
 “done. And that the said commissioners, or the
 “greater part of them, shall, after such tender of
 “payment or performance, have power to sell and

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“dispose of such lands, tenements, hereditaments,
 “goods and chattels, and other estates, so granted,
 “conveyed or assured, upon condition to and for
 “the benefit of the creditors, as fully as they may sell
 “or dispose of any of the estates of the bankrupt.”

“21 Jac. 1. c. 19. s. 14. No purchaser for good
 “and valuable consideration shall be impeached
 “by virtue of this act or any other act heretofore
 “made against bankrupts, unless the commission to
 “prove him a bankrupt be sued forth against such
 “bankrupt within five years after he shall become a
 “bankrupt.”

“5 Geo. 2. c. 30. s. 42. No schedule shall be an-
 “nexed to any deed of assignment of the personal
 “estate of such bankrupt from the commissioners to
 “the assignees of the said estate.”

10 Mod. 244.
 1 P. W. 251.

The legislature, considering that the bankrupt
 has been guilty of a fraud, and that he is therefore
 an improper person to be intrusted any more with
 the management of his own estate, by these statutes
 appoints other persons in the place of the bankrupt
 for the safety of the creditors.

Crisp v. Pratt
 Cro. Car. 550.

Copyhold estates of the bankrupt, are expressly
 named in the 13 Eliz. but not in the subsequent sta-
 tutes, but it has been determined that copyholds are
 within the intent and purview of all of them; for be-
 ing in the first statute, and the others made in further
 confirmation and approbation thereof, they ought
 to be expounded liberally, and shall be construed ac-
 cordingly, to make as strong provision as they may
 against the bankrupt.

The lord is to be compounded with for the ad-
 mission, by the express provision of the statute, but if
 the

the commissioners sell a copyhold, and the vendee tenders to the lord a competent fine, which the lord refuses, and will not admit the vendee, he may enter. Stone 127.

Where the commissioners sell the copyhold lands, the bargain and sale binds the copyholder and bars his estate, and he is no copyholder after the bargain and sale is inrolled; for the bargainee, by the statute is only barred to take the profits until admittance, which is for the lord's benefit in respect of the fine due to him, and when the bargainee is admitted by the lord, the estate shall vest in him, and have reference to the bargain and sale, and shall divest the claim of any intermediate estate. As if the bankrupt dies between the bargain and sale and the admittance of the bargainee, his wife (where the custom of the manor was, that the wife of a copyholder dying, *tenant* should be endowed) shall not be endowed. And if the commissioners assign the bankrupt's copyhold estates to the general assignees, they are to be considered as vendees; for if not, the assignee might continue in possession for years before he made a sale, and yet by an express provision in the act, he is restrained from receiving the profits till he has compounded with the lord, and therefore the assignee must, upon his admittance, pay a fine to the lord, and, upon sale of the estate, another fine must be paid; however this inconvenience may be avoided by excepting copyholds out of the deed of assignment of the bankrupt's estate, for the commissioners may convey to a purchaser in the first instance; and by leaving out the copyhold estate of a bankrupt in a temporary assignment, the creditors will

Parkerv. Bleeks
Cro. Car. 563.

Drury v. Man
1 Atk. 96.

will run no risk with regard to the crown, for an extent will not affect it.

Ex parte
Proudfoot
1 Atk. 253.

When assignees are chosen under a commission, all the estate and effects of the bankrupt are vested in them by the assignment, (but till the assignment the property is not transferred out of the bankrupt) and every new acquisition previous to the certificate will vest in the assignees; but as to future real estates, there must be a new assignment of them.

Billing. 118.

2 P. W. 385, 386.

Billing. 111.
Good. 89.

If there be two joint tenants, and the one becomes bankrupt and dies, *Billinghurst* is of opinion, the bankrupt's part shall be sold, and that there shall be no survivorship; because the bankrupt's moiety is bound by the statutes; and also the bankrupt had power to sell the same in his life-time, and might depart with it. And by the 1 Jac. c. 15, the commissioners after the bankrupt's death may proceed in execution, in and upon the commission for and concerning the offender's lands, tenements, &c. in such sort as if the offender had been living; which they cannot do, if the survivorship is held to take place.

1 Com. Dig. 530.

If the bankrupt be a joint tenant in fee, for life or years, the commissioners may sell a moiety. So if he be seised in right of his wife, they may sell during the coverture.

1 Burn's Eccl.
Law, 4 Ed. p.
125.

In case of a patron becoming bankrupt, the commissioners may sell the advowson of the living; but if the church be void at the time of the sale, the vendee shall not present to the void turn, but the bankrupt himself, because the void turn of a church is not valuable.

1 Atk. 213, 222

The commissioners may sell offices of inheritance and for terms of years, but where it is an office concerning

cerning the execution of justice (and therefore within 5 & 6 Edw. 6. c. 16.) it cannot be sold. As where one *William Lowfield* in 1722. in consideration of the sum of 400 l. was by the Lord Mayor and court of aldermen of the city of *London* admitted to the office of a Serjeant at Mace, to hold, *quamdiu se bene gesserit*. The duty of that office is to execute the writs and processess, directed to the sheriffs of *London*, and he has no salary, but depends on what he gets by the execution of such process. *Lowfield* became a bankrupt. The assignees petitioned Lord Chancellor *King* to have his place sold for the benefit of his creditors, but his lordship declared that the place was not saleable, as it concerned the execution of justice.

1 Atk. 212.

On the other hand, a place that does not concern the execution of justice, but only the police, may be sold.

Edward Richardson having purchased the office of the under-marshal of the city of *London* became a bankrupt.

Ex parte Butler
1 Atk. 210.
275.

To the office is annexed, not only a yearly salary of 60 l. payable half yearly out of the chamber of the city, but also a freedom of the said city every year, worth 25 l. and considerable perquisites besides.

At the time of *Richardson's* admission, it was expressed in the appointment, that he should have, hold, exercise and enjoy the said office, with all fees thereunto belonging, so long as he should well and honestly use and behave himself therein.

The business of the under-marshal is for himself and his men, diligently to attend the streets, and carry

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carry all such vagrant persons as they shall find within the city and liberties to *Bridewell*, or otherwise to give punishment to them according to law. He is likewise to see that the scavengers in every ward cause the streets and lanes to be duly swept and paved, and that the rakers of the wards carry away the soil. It is also required of him to ride or go abroad in the night-time, twice in every week at least, to see the watches duly kept.

The principal question was, whether the place of under-marshal is an office that concerns the administration of justice, and whether by the stat. of the 5 & 6 Ed. 6. c. 16. it is, or is not lawful to sell such an office?

Lord *Hardwicke* held that an office for term of years was within the act, and that this was clearly an office within the meaning of the 34 & 35 H. 8. c. 4. and 13 Eliz. c. 7. and that it was an office for life, for an office *quāmdiu se bene gesserit* had always been held to be an office for life, and as they express it in the *Scotch* law, it is what a person holds *aut per vitium aut culpam*.

His lordship added, that he thought clearly the assignees might in this case by anticipation, sell the office (and not wait to receive the accruing profits) and that it is not within the stat. of Ed. 6.; if it had been, he should certainly have made the same order as Lord *King* did in *Lewisfield's* case.

In arguing *Richardson's* case, Lord *Hardwicke* said, that if an officer in the army should become a bankrupt, he should have no doubt, but that he should have power to lay his hands upon his pay, for the benefit

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benefit of his creditors. But this was only an *obiter dictum*, and seems to have been over-ruled in the House of Lords on an appeal from Scotland.

For upon a question whether the certificate of a bankrupt was not invalidated by his concealment of his effects; it was alledged against him, that he had concealed some real estates, and also, that upon his last examination he was possessed of an office under the government which yielded him 182*l.* per annum, half-pay, and that there was then due due to him 48*l.* of arrears of the said half-pay which he had not discovered nor surrendered to the commissioners.

Cathart v. Blackwood in the House of Lords, 26 Feb. 1765.

The lord Ordinary having considered the representation and answers thereto, his lordship made *Avissandum* to the whole lords, and ordered both parties to lodge their informations. And informations for both parties upon the whole cause having been prepared and lodged accordingly, and the cause reported to the whole lords, by the lord Ordinary, their lordships did repell the defence founded on the Lord Chancellor's certificate and decree.

From which interlocutor there was an appeal.

The House of Lords ordered and adjudged that the interlocutor complained of should be reversed.

The commissioners may assign a reversion in remainder as well as lands in possession, so a future interest, as a term to commence *in futuro*, or lands devised to a bankrupt, and he shall not waive the devise.

1 Com. Dig. 530.

Good. 82.

The commissioners before the time of the performance of a condition, may appoint under their hands and seals, such person as they shall think fit to perform the condition, and after such perform-

Billing. 142. Stone. 125.

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ance shall dispose of such lands or goods for the creditor's advantage, as fully as of any other of the bankrupt's estate.

2 Vern. 97.

The assignee shall have the benefit of an equity of redemption, but not of a covenant for the renewal of a lease.

If a mortgage is made by a bankrupt tenant in tail, without suffering a recovery, the assignees shall take advantage of this defect, and hold the land clear of the mortgage.

Beck v. Welsh.
1 Will. 276.

As where *Thomas Gundry* being seised in fee tail of the lands in question, made a mortgage thereof to *Welsh* for a term of 500 years without having suffered a recovery, and afterwards became a bankrupt, and died before the bringing the ejectment.

The court held that the statute 21 Jac. 1. was made for the benefit of creditors who had no specific lien upon the lands of a bankrupt, and not for any particular creditors who relied upon the title he accepted. That tenant in tail without suffering a recovery could only affect the estate for his life, and he being dead, the mortgagee's title is at an end, and this statute never intended to put the prior incumbrancers on an estate tail in a better case than they would otherwise have been if the statute had never been made.

Tucker v. Cosh
Style 289.

Lands conveyed by a bankrupt, before his bankruptcy, in consideration of marriage to the use of himself and his wife, may be assigned by the commissioners, though the wife is not named by the statute, for she is within the intent of it. *Sed qua.*

The statute 13 Eliz. "For the avoiding and abolishing of feigned, covenous and fraudulent testaments, gifts, grants, alienations, conveyances,
" bonds,

"bonds, suits, judgments, and executions, as well
 "of lands and tenements as of goods and chattels
 "which feoffments, &c. have been and are devised,
 "&c. to the end, purpose and intent, to delay, hin-
 "der or defraud creditors and others of their just
 "and lawful actions, suits, debts, &c. enacts that
 "all and every feoffment, gift, grant, alienation,
 "bargain and conveyance of lands, &c. which are
 "made for any intent or purpose before declared
 "or expressed, shall be deemed and taken to be
 "clearly and utterly void, frustrate, and of none
 "effect."

Upon this statute there is no other description
 of the intent of the conveyance in the enacting
 clause, but by reference only to the preamble,
 "The intent before declared and expressed." So
 that unless the conveyance is made for that pur-
 pose, it will not be void. Where a man has
 died indebted, who in his life-time made a volun-
 tary settlement, upon application to the court of
 Chancery, to make it subject to his debts as real
 assets, the court have always denied it, unless it
 appears he was indebted at the time the convey-
 ance was executed. But upon the stat. 27 Eliz.
 c. 4. which relates to purchasers, there indeed a
 settlement is clearly void, if voluntary, that is not
 for a valuable consideration, and the subsequent
 purchasers shall prevail to set aside such settlement.
 So under the stat. 1 Jac. c. 15. s. 5. a voluntary con-
 veyance of the bankrupt's estate, or personal effects,
 falls directly within it, and the deed being expres-
 sed to be made for the consideration of five shillings,

1 Act. 94.

Ante 211. p. 11

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and other valuable considerations, does not oblige the court to hold it at all events, to be for a valuable consideration, but at most only admits the party to prove that there were other valuable considerations.

Walker v. Burrows.
1 Atk. 93.

In a case before the court of Chancery it appeared, the plaintiffs were assignees under a commission of bankruptcy against the father of the defendant, who in 1739, conveyed all his shop, goods, &c. by bill of sale to the defendant his son, and in 1740 became bankrupt. In the year 1718, he, *after marriage*, conveyed to trustees his real estate in consideration of five shillings, and other valuable considerations, in trust for himself for life, to his wife for life, then to his eldest son if he survived his father and mother, and so to the next son, &c.

Lord *Hardwicke* said, as to the first part of the case, there was not a foundation to set aside the assignment of the household goods as fraudulent, because it was made many months before the bankruptcy, and the consideration of the assignment was proved, and also followed by the possession of the son.

And as to the second, The trustees under the deed must convey to the assignees under the commission; for it falls directly within the clause. 1 Jac. 1. c. 15. s. 5.

Fearne 439, 440.

The commissioners may assign a possibility of right belonging to the bankrupt.

Higden v. Williamson.
3 P. W. 132.

As where *A.* devises his lands to his daughter for life, then to trustees to be sold, and the money to be divided amongst such of his daughter's children, as should be living at the time of her death. The testator

tator died, and the daughter had issue (amongst others) a son, who was a trader, and, becoming bankrupt, the commissioners assigned over all the bankrupt's estate. The bankrupt got his certificate allowed, and then the mother died.

The court decreed that the assignees were intitled to the bankrupt's share arising from the sale, because the son might, in his mother's life-time, have released this contingent interest. So that the commissioners, by virtue of 13 *Eliz.* are enabled to assign it, and consequently their assignees must be well entitled. And because the statute 21 *Jac.* 1. declares, that the statutes concerning bankrupts shall in all things be largely and beneficially expounded for the relief of creditors; and also because the statutes for discharging bankrupts on certificates, never intended to intitle the bankrupt to any estate by virtue of any claim anterior to his bankruptcy, as the title in question clearly was; and besides, the word *possibility* is in all the latter statutes concerning bankrupts.

If a man, before he engages in trade, purchases lands to himself, his wife, and his son, this is not within the stat. 21 *Jac.* 1. for being purchased before he was a tradesman, and before he became a debtor, for the statute intends such persons only who gained their living by buying and selling, and by fraud had passed away their lands to friends in trust. Cro. Car. 550.

Thus *Ralph Brisco* purchased lands to him and *Margaret* his wife, and to *Ralph Brisco* their son and his heirs. And two years after he became an inn-keeper, and received all the profits of the land, until he became a bankrupt. Crisp v. Pratt.
Cro. Car. 548.

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Upon a question, whether it be in the power of the commissioners to sell the land, three judges against one held, that here many years before, when he was a clear man, he procured this land to be settled upon his son (no fraud or purpose of being a bankrupt being found), it would therefore be a mischievous case, and full of inconvenience, if it should be within the statute; for none might know with whom to deal by way of marriage or otherwise, when he is not a tradesman, and settles land upon his wife and children *bonâ fide*, and without cause of being suspected to be a bankrupt, and afterwards becomes a tradesman, and then a bankrupt, if this act should overthrow a conveyance duly settled.

And the principle of the decision in this case is recognized in a later authority, where

Lilly v. Osborn,
3 P. W. 298.

One purchased a copyhold, and took a surrender of it to the use of himself for life, remainder to the use of his wife for life, remainder to the use of trustees for twenty-one years, to raise 80 *l.* for his daughter, remainder to the use of himself in fee.

At the time of the purchase, the purchaser was no trader, nor owed any debts; but afterwards he engaged in trade, contracted debts, and about sixteen years after became a bankrupt.

A question was raised, whether this was within the clause in the stat. 21 *Jac.* 1.

The Master of the Rolls at first inclined, that this was within the words, being a provision for a child, and merely voluntary, without any consideration, as against creditors; but afterwards, upon citing the case of *Crisp* and *Pratt*, and considering the party was not so much as a trader when he made the settlement,

Ante, 225.

tlement, the Master of the Rolls was clear, that the settlement was not liable to the bankruptcy.

But when a party, *being a trader*, makes such purchase, the case is very different, for it will then come expressly within the statute.

Elizabeth Pearce being about to renew a lease of an estate, at the expence of a fine of 160 *l.* borrowed of *Flood* 80 *l.* (of which *Flood* himself borrowed 50 *l.*) and gave a promissory note to repay the money, unless she should bequeath the estate to some or one of his children; she afterwards devised the estate to the defendant *Flood's* daughter; but before the decease of Mrs. *Pearce*, *Flood* had become a bankrupt. His assignees claimed the 80 *l.* or half of the estate, as being purchased by the bankrupt for the advancement of a child, under 1 *Jac.* 1. c. 15. and upon a hearing at the Rolls, obtained a decree, from which there was an appeal.

Fryer v. Flood,
Brown, 160.

Lord Chancellor, This is a hard case, and I should be glad, but I do not see how, to take it out of the principle of the statute. It is very clear, that one of the cases to be remedied by the statute, is that of a father buying an estate from a stranger, to be conveyed to his child. Then, if the case was so varied as to make him a trustee (suppose for a moiety) for the child, that would go to the assignees. In the present case, the aunt would not perhaps have given it to the child, but for the agreement with *the trading* father. If it was money advanced without a lien, it might be dangerous to give it to the assignees; but as far as the money advanced is a lien, the father procured an interest which must go to the assignees. And his Lordship affirmed the decree.

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10ft 71.

A man having an estate, in right of his wife, settled to himself for life, with other intervening uses, remainder to himself in fee, with a power to charge the uses. He becomes a bankrupt. The remainder in fee vests in the assignees, and his power of revocation is gone.

Ante
1 Vez. 368.

The stat. 21 Jac. 1. c. 19. relating to property by possession, makes the reputed ownership as real for the benefit of creditors in general, the person's own misbehaviour depriving them of the benefit of the conveyance, though made for good consideration, and they are reduced to the same situation as other creditors.

The plan of the stat. 13 Eliz. differs greatly from the plan of the statute 21 Jac. 1. c. 19. this act supposing the conveyance to be on good consideration, and the party to be an honest creditor or mortgagee, but not to have any preference to other creditors, because he does not give notice by having that delivery to him, to which he was intitled.

1 Vez. 368.

The mortgagee is considered as the true owner and proprietor of the lands or goods within this statute.

Falkener v.
Case.
Brown 125.
1 Vez. 372.
1 Atk. 171.
1 Atk. 177.

Choses in action are held within the statute; for though they are only assignable in equity, equity will follow the law in such a case. If a bond is assigned, the bond must be delivered, and notice must be given to the debtor; but in assignments of book debts, notice alone is sufficient, because there can be no delivery; and such acts are equal to a delivery of goods, which are capable of delivery.

A distinction is made between mortgages of real estates and leasehold interests, and goods and other personal

personal chattels: for in mortgages of real estates and chattels real, the non-delivery of possession does not amount to that species of fraud intended to be checked by the statute, as such property is usually mortgaged, the mortgagor remaining in possession. Creditors therefore cannot be deceived and deluded by the possession of property of that nature; but where goods are pawned or mortgaged, it is very different, because possession and a power of disposal of such property are the only evidences of ownership to which the creditor looks.

And consistently with this distinction is the case of *Stephens v. Sole*. There *William Tappenden* indebted to the plaintiff 1400 l. For securing payment thereof mortgaged to the plaintiff some leasehold estates, wharfs, and three hoys, *but kept possession of the hoys*, and some time after became bankrupt. The plaintiff brought an ejectment, and got possession of the leasehold estate, but the assignees got the hoys. The leasehold not being sufficient to pay the plaintiff his principal and interest, he brought a bill to foreclose, and to compel the assignees to redeem the hoys, or that they might be sold to pay his demands. The assignees admitting the leasehold not sufficient to pay the plaintiff, insisted on their right to the hoys under the statute, the bankrupt having the possession, and acting as owner thereof till declared bankrupt. Lord *Talbot* decreed, that the plaintiff might be at liberty to come in under the commission for his deficiency; dismissing the bill so far as it required an account of the profits of the hoys, which were ordered to be sold for the benefit of the creditors in general.

Stephens v.
Sole,
1 Vez. 352.
Bowrne v.
Dodson,
1 Atk. 154.

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1 Atk. 176.

Where goods are mortgaged capable of an actual delivery, such delivery ought to be made ; but if they cannot be delivered at the time of the contract, it will be sufficient, if the mortgagee has the documents and muniments delivered to him, in order to reduce them into possession.

Brown v. Heathcote.

1 Atk. 160.

As where *Roger Williams* and his partner, *Jeremiah Wilder* gave a bond to the defendant *Heathcote* for 1200 l. and on the same day executed a deed of assignment, by which it was agreed, if default should be made in payment of the money advanced by *Heathcote, Williams* and *Wilder* should make over to the defendant *Heathcote*, or order, the goods in the two ships *Samuel* and *Molly*, and *Anne Billander*, together with the bills of lading, which might be the proceed of the returns of the said goods and cargo for any port in *England*, and that should be consigned to *Williams* and *Wilder*, and that they should put *Heathcote* in possession thereof. And they also covenanted, that after receiving advice from beyond sea of any goods, that they would acquaint the defendant *Heathcote* with it, and empower him to dispose of the same, and keep the money arising from them in satisfaction of his bond.

Williams did accordingly assign over to the defendant *Heathcote* thirteen bills of lading, and several policies of insurance containing the goods in the ship *Samuel* and *Molly*, as a collateral security for the sum of 1200 l. the latter were indorsed to the defendant *Heathcote*, but the former were not.

At the time of these transactions between *Williams* and *Heathcote*, the ship was at sea in a voyage to *Guinea*.

Williams

Williams became a bankrupt, and a question arose whether this assignment would bind the creditors under the commission.

Lord *Hardwicke* held, that this, upon the whole, is not within the meaning of the act of parliament of the 21 *Jac.* 1.

And agreeably to this case it has since been determined that a mortgage of a ship at sea, if the mortgagee takes all methods in his power to get possession, such as a bill of sale, &c. will be valid, notwithstanding the stat. 21 *Jac.* 1. for otherwise no security could be made of a ship at sea. But if the creditor was to suffer the ship to come back and go upon another voyage, the case would be very different. For the delivering of the grand bill of sale will not be sufficient, if there is an opportunity of taking actual possession.

Ex parte
Matthews.
2 Vez. 272.

Thus, where it appeared that *Walter Phyne* the bankrupt, was owner of nineteen thirty-two parts of a ship called the *Friendship*, and that by an indenture made on the 4th *July*, 1777, between the said *Walter Phyne* on the one part, and *John* and *Bartlett Gurney* bankers, of the other part, reciting that the said *John* and *Bartlett Gurney* had, on the date thereof, paid and lent unto *Walter Phyne* 400 *l.* on bottomree, to be paid by the said *Walter Phyne*, his executors, &c. within six months after notice should be given to him by them in writing, but such notice not to be given till six months after the date of the said indenture (unless a total loss by perils of the sea, enemies, pirates or fire should happen.) The premium and interest were 25 *l.*

Hall v. Gurney.
Hil. 24 G. 3.
B. R.

It was agreed that in case of default of payment, it should be lawful for *John* and *Bartlett Gurney* to

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dispose of the ship without interruption ; and in case a total loss should happen before the six months expired, then no payment to be demanded by *John* and *Bartlett Gurney* ; but the premium should be paid to the date of the loss.

At the time of the execution of the indenture, the ship was at *Yarmouth*, and the grand bill of sale was delivered to the defendants. *Walter Phyne* and the other part-owners had the management, and appeared and acted as the visible owners from the time of the assignment till the bankruptcy of *Walter Phyne*.

The question was, whether *John* and *Bartlett Gurney* were intitled to retain so much of *Walter Phyne's* share of the money arising from the sale of the ship, as will be sufficient to discharge the interest and principal due on the assignment against the assignees of *Walter Phyne*.

Lord *Mansfield* said, that it had been determined that the mortgage of a ship at sea, is not within the statute where the grand bill of sale is delivered to the mortgagee. But that the case of *Stephens v. Sole* is a very strong case, and the court were bound by it. That he at first doubted whether the delivery of the grand bill of sale by *Walter Phyne* would not distinguish it from *Stephens v. Sole* ; but that it appears there was a grand bill of sale in that case, which was delivered to the mortgagee, though the mortgagor kept possession of the hoy. And therefore that the defendant was not intitled to retain against the assignees.

Mortgages of land where the mortgagor remains in possession, are not held to be within this statute, because

because the mortgagor as having much the largest share in the estate, is considered as *owner*, and having the property in it. But mortgages of personal chattels are considered in a different light, because possession of them carries with it an apparent presumption of right and ownership. This distinction is supported by the case of *Stephens v Sole*, and confirmed by a subsequent decision.

Ante. 229.

William Harvest a trader, borrowed in June, 1732, from *Benjamin* and *Joseph Tomkins* 1500 l. and as a security, conveyed and assigned his dwelling-house and brew-house at *Kingston*, and all the coppers and utensils in trade belonging thereto, by way of mortgage subject to redemption. He afterwards took *Jonathan Stephens* into partnership with him, and in less than a month after the partnership, made a second mortgage to *Potter*, in trust for *Stephens* of his moiety, not only of the utensils, but the stock in trade, debts, profits, &c. for securing a sum of money then lent him by *Stephens*, and any future sums that should be lent. In 1737, he made a third mortgage of the seventh part of his undivided moiety, of all the stock in trade, utensils, debts due or to grow due, to Sir *James Reynell*. In April 1738, he made a fourth mortgage of the seventh part of his undivided moiety, with the same description to *Skip*. In September 1738 he made a fifth mortgage to *Stephens*, for securing to him the sum of 2000 l. which *Stephens* had paid to one *Burgh*, who had the original mortgage on the freehold estate, the real premises which were conveyed by way of lease to *Tomkins*, having been mortgaged to *Philip Stone*, in 1725, and assigned to *Burgh*, who assigned

Ryal v. Rowles.

1 Atk. 165.
1 Vesey. 348.

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to *Stephens* upon being paid the 2000 *l.* He afterwards made a sixth mortgage to *George Harvest* his son of the seventh part of his undivided moiety of the partnership stock in trade, debts, utensils and profits, in consideration of a sum of money lent. The question was, whether all, or any, or which of these mortgages were intitled to resort to the utensils, &c. for satisfaction, or whether they must come under the commission.

The court decreed that these mortgages could not prevail as specific liens and securities. That as to the mortgages of lands and fixtures, they are not affected by the act of parliament. But that the act of parliament affected the assignment to *Potter* as trustee for *Stephens*, relating to any utensils, not fixed to the freehold. So also all the four mortgages of the seventh part, and they can only be considered as general creditors.

Bryson v. Wythe.
Hil. 24. G. 3.
B. R.

In a subsequent case it appeared, that *Bryson* being possessed of a dyer's plant, sold it to *Simpson* for 165 *l.* 16 *s.* 6 *d.* and *Simpson* gave *Bryson* two promissory notes dated the 19th day of *January* 1780, one for the sum of 82 *l.* 13 *s.* 6 *d.* payable on the 6th of *January* 1781, and the other for the sum of 82 *l.* 13 *s.* payable on the 6th *January* 1782. When the first note became due *Simpson* could not take it up, and *Bryson* offered to take back the plant, and return the notes, and agreed that he would let him the plant at the rent of 5 *l.* a year, upon the valuation amounting to 8 *l.* 5 *s.* 6 *d.* per ann. for the term of three years. To this proposal *Simpson* very readily agreed, and a deed was accordingly executed, by which it was agreed that *Bryson* should let the

the plant to *Simpson*, and that if he should make default in any of the quarterly payments, or in the performance of any of the covenants, then the term granted should cease, and *Simpson* should deliver up the plant, &c. and it should be lawful for *Bryson* to take immediate possession of the same.

There was a memorandum at the foot of the deed, that *Simpson* had put *Bryson* in full possession of the plant, by delivering to him one winch in the name of the whole.

On the 5th of *July* 1783, a commission of bankruptcy issued against *Simpson*, and the messenger took possession of the plant.

The question was, whether this was within the *st.* 21. *Jac.* 1. The court held clearly that it was.

The enacting part of 21. *Jac.* 1. c. 19. s. 11. is not restrained by the preamble, but it extends to other person's goods, as well as those which were originally the bankrupt's property; for if the statute meant to comprehend nothing more than is contained in the preamble, it means nothing at all, because even before the statute, if a man had conveyed his own goods to a third person and had kept the possession, such possession would have been void, as being fraudulent, according to the doctrine in *Twine's* case.

Mace kept a public house, had a licence, and said she was married to one *Penrice*. She went to the excise-office, had his name entered in the books, with a note in the margin, "married." *Penrice* had the licence, and continued in possession of the house and goods, from that time, till he absconded, and went to *Pimlico*, which was an act of bankruptcy.

Mace

Cowp. 233.

Mace v. Cadell
Cowp. 232.

Mace the plaintiff first claimed the goods in question, under a bill of sale, from *Penrice*, but afterwards, as her own original property, and denied that *Penrice*, and she were married. Upon a question, whether this was within the statute, the court held that it was, but observed that the statute does not extend to all possible cases, where one man has another man's goods in his possession.—It does not extend to the case of factors and goldsmiths, who have the possession of other men's goods, merely as trusts, or under a bare authority to sell, for the use of their principal; but the goods must be such as the party suffers the trader to sell, as his own. The possession of goods by a factor, is not such a possession as is within the meaning of the statute, nor will the case be altered, if the factor acts upon a *del credere* commission.

Serimshire v.
Alderton.
2 Stra. 1182.

Thus Lord Chief Justice *Lee*, laid down the rule, that this method had not deprived the consignor of his remedy against the buyer, provided there was no payment to the factor. It is true, the jury did not regard this direction, and two verdicts were found against it; but it has since been several times recognized and established as law.

Escot v.
Milward.
Sittings after
Michaelmas
term 1783.

An action was tried at *Guildhall* before Mr. Justice *Buller*, in which it appeared, the plaintiffs were merchants in *London*, and in *June* 1783. had a quantity of wheat consigned to them from *Ostend*, the sale of which they intrusted to one *Farrer* as their factor. The factors in the corn trade, like those in the linen trade, receive a *del credere* commission, besides their factorage, and never communicate the names of the purchasers,

to

to the owners, except in case of the factor's failure.

Farrer, on the 9th *June*, 1783. sold 211 quarters of the plaintiff's wheat, to the defendant *Milward*.

On the 16th *June*, *Farrer* being about to stop payment, gave up the wheat under his care, to the plaintiffs, and sent them the names of the buyers.

On the 20th *June*, *Farrer* stopt payment, and a short time afterwards, his creditors executed a deed of composition. On the 21st *June*, the plaintiff delivered the defendant, *Milward*, a bill of parcels, of the wheat sold to him, by *Farrer*, as their factor, and desired him to accept a bill, at a month for the amount, which he refused, insisting that he had a right to set off a debt due to him from *Farrer*, against the price of the wheat.

Mr. Justice *Buller*, in his charge to the jury, declared the doctrine laid down by Lord Chief Justice *Lee*, in *Scrimshire v. Alderton* to be law, and the plaintiffs recovered a verdict.

One *Murray*, of *Belfast* in *Ireland*, in 1782. assigned a quantity of linens to *Bate* and *Henkell* of *London*, to be disposed of by them as his factors, upon a *del credere* commission. *Bate* and *Henkell* sold the linens for 192*l.* 14*s.* and before they received the money became bankrupts. The assignees afterwards, received the money of the purchaser, which *Murray* demanded of the assignees, who refused to pay it, insisting that *Murray* might come in as a creditor, under the commission. *Murray* presented a petition to the Lord Chancellor, praying that the assignees might be ordered to pay him the money his linen sold for, after deducting the commissions and

Ex parte
Murray.
December 1783.

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and charges, and a small sum due from *Murray* to the bankrupts, on another account.

His Lordship, after hearing the point of law argued, was clearly of opinion, that the purchaser, not having paid for the linens, previous to the bankruptcy, *Murray* the consignor was intitled to receive the price of the linen, and accordingly, ordered the assignees to pay him the money.

3 Bur. 1369.

Neither does the statute extend to the case of an executor, or administrator becoming bankrupt, for the goods, &c. they may possess as such, cannot be assigned by the commissioners.

Ex parte Marf.
1 Atk. 158.

As where it appeared that Mr. *Marfb* a mercer died, possessed of goods to the amount of 2000*l.* and some plate. He left a widow and children. His widow took out administration, and married a man who became bankrupt. Upon a question whether the assignees of the second husband were intitled to the plate, which had been left in the possession of the bankrupt. Lord *Hardwicke* said, it certainly was not within the statute, because the administratrix had them in *auter droit*, and the husband could have them in no better right, and therefore, not at all liable to the debts of the second husband; for the meaning of the statute (if it is possible to put any meaning upon some of the clauses which are very darkly penned,) is only with regard to goods, the bankrupt has in his own right. But if a tradesman is under a will, made executor, and residuary legatee, and before his bankruptcy, collects in enough of the testator's effects, to pay debts, and particular legacies, and the remainder of the assets was uncollected, though the assignees in law, would not be intitled

2 Atk. 213.

intituled to get it in, because the bankrupt has it in *auter droit* as executor, yet the assignees under the commission, notwithstanding the legal interest is not vested in them, might, by the aid of the court of Chancery, get in the assets in the name of the executor.

The bare leaving the party in possession of goods, without any power to dispose, will not therefore be within the statute; but it must in a great measure depend upon the nature of the contract between the parties; for if the goods are left in a mere temporary custody with the bankrupt, it will not be within the statute.

West v. Skip.
1 Vez. 243.

Thus *Flyn* and *Field* purchased of *Mathews* two thirds of 500 barrels of tar, and the other third was to be consigned to them for sale at the risk of *Mathews*. And it was agreed, that the tar should be lodged in a warehouse, until *Flyn* and *Field* should give orders for shipping the same off, as opportunity offered, they having none at that time. And accordingly *Mathews* caused the tar to be put into a warehouse or cellar of his own, for the purposes of the said agreement.

Ex parte Flyn.
1 Atk. 185.

Flyn and *Field* paid *Mathews* in London bills for 150 *l.* being the amount of the value of the said two thirds of the said tar agreed for; and *Mathews* also, at the same time made out and delivered the petitioners a bill of parcels of the said tar, in the words and figures following: *Liverpool*, 8th July 1748, Messrs. *Flyn* and *Field* bought of *Hugh Mathews* two thirds of 500 barrels of Plantation tar, at 9s. per barrel; the whole amount 225 *l.* the whole to be sold by said gentlemen for account as follows: two thirds their

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their account 150 l. one third *Hugh Mathew's* account 75 l.

Mathews became bankrupt, and his assignees took possession of the tar as they found it remaining in his warehouse.

Lord Chancellor said, He thought the case not within the intent of the act of parliament, which meant to guard against leaving goods in the possession, order, and disposition of bankrupts; but here it was merely a temporary custody, because the buyers of the tar, had not an opportunity of selling it. That it could not with any propriety be said, the tar was in the order, disposition, or power of the bankrupt, and therefore not within the act of parliament. He added, that upon the foot of this agreement between *Flyn, Field, and Mathews*, this is to be considered as an undivided property, of which they were tenants in common, there must be a possession of those goods in one or other of them, and the possession of one is the possession of all.

Walker v.
Burnell.
Doug. 303.

So where a commission issued against *Bean* in *August 1772*, under which he obtained his certificate. He never removed from his house, nor were the furniture, household goods, and plate, sold or removed, but he remained in possession of them, and after his certificate engaged in trade on his own account, and continued to trade till some time in the summer 1779, and after the execution in question. But though he traded for himself, he was continued in the house by his assignees, as an agent for them, in getting in, and settling his affairs; and, in all the statements of the bankrupt's estate and effects, which they had laid before his creditors at different times,
down

down to *March*, 1779, the household goods in question (which had been inventoried and valued immediately after the commission issued), were included.

In *March*, 1779, an action was commenced against *Bean* by two creditors, *Davis* and *Prothero*, who afterwards recovered a judgment, and sued out a *fieri facias*.

The execution came in, in *June*, and about the same time, the assignees had the goods again appraised, when they were valued at 353*l*. The present action was commenced, on the 11th *November* 1779, and two days afterwards a second commission issued against *Bean*. The time of the act of bankruptcy, on which this second commission was founded, did not appear. The present plaintiffs proved a debt under it. A question was raised, whether *Bean*'s possession was not such as intitled the assignees under the second commission to the goods, by virtue of the stat. 21 *Jac.* 1.

Lord *Mansfield*. I am satisfied the case cannot be brought within the statute. Many cases have arisen upon this act, where the party left in possession might sell; but *Bean* had not the disposition so as to sell the goods. If he had sold them, it would have been a breach of trust towards the plaintiffs. If I send my plate to a banker's, to be sure he may dispose of it; but he has not my permission or consent so to do.

Willes, Justice. With regard to the question on the statute, the words are, "If the bankrupts take upon them the sale or disposition as owners." *Bean* could not sell; but he was permitted to use the goods as visible owner for seven years. I shall not give a decisive opinion on the point. It may come often

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before the court. This does not seem to me to be like the case of plate sent to a banker's.

Albhurst, Justice. The statute certainly does not extend to every case of possession. Not, for instance, to the case of a ready furnished lodging. I look upon this in the very same light. *Bean* gave his service in settling and arranging the affairs of the estate, in lieu of rent.

Buller, Justice. Questions of this kind have much more of fact than of law in them. The sort of possession, disposition, &c. are facts to be proved, and for the consideration of the jury. The statute says, "Whereof they shall be reputed owners." Here the bankrupt was not the reputed owner. Possession of the goods exposed for sale in a shop, may be within the statute; but possession of the furniture in a house, is no more evidence of a right to that furniture, than of a right to the house.

If a bankrupt is a factor, and goods are consigned to him or his order, which come to his possession; though he has the power of immediately selling them, and taking the money, in which case the consignee can only come as a general creditor upon his estate, yet notwithstanding the legal property the factor had in, and power over them, if they remain in *specie* in his hands, they shall be delivered to the principal, who has a lien upon them as his own property, and the bankrupt only as agent and trustee for him. And even where the factor had sold the goods, and taken notes for them, it has been determined, that the original owner had a specific lien upon, and was intitled to the notes.

The

Ex parte
Dumas.
2 Vez. 586.
1 Atk. 232.

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The commissioners may sell monies due to a bankrupt upon a judgment, for all those effects and debts which he could collect and turn into money, the assignees were designed to have, in as full a manner; therefore debts due to the wife before her marriage, may be assigned by the commissioners in a commission against the husband.

Sir W. Jones
215.

1 P. W. 253.

The commissioners may assign an obligation taken in another's name to the bankrupt's use.

As where one became indebted to a bankrupt, and he and the bankrupt entered into an obligation for the money to *M. L.* in trust for the bankrupt.

Gerrard v.
Aylmer.
Palm. 505.

A commission of bankruptcy issued, and this debt was assigned to a creditor. The obligee died, and his executor released the debt. The creditor brought debt, and the action was held to lie; for the interest of the debt is transferred to the creditor by the stat.

21 Jac. the bond being to the use of the bankrupt; and therefore the executor's release is no bar. And the bankrupt himself being engaged, made no difference, for the bond was in trust for him.

The commissioners here, may sell the bankrupt's goods in *Ireland*; but this position must be understood with some qualification; for Lord *Mansfield*, at the Cockpit, said, that the statutes of bankrupts do not extend to the colonies, or any of the King's dominions out of *England*; but the assignments under such commissions are considered as voluntary, and as such take place between the assignee and the bankrupt, but do not affect the rights of any other creditors. And this he observed had been settled in many cases, and particularly in *Wilson's* bankruptcy, where the assignees under the commission, attempted

Good. 114.

Cleve v. Mills
at the Cockpit,
27 July 1764.

to stop the proceedings of particular creditors in *Scotland*, from getting advantage of the general creditors under the commission; but Lord *Hardwicke* would not interfere, saying, that the creditors had a right to affect the estate in *Scotland*, notwithstanding the commission in *England*; but if after that, they should offer to come in under the commission, they should have no benefit from it, till the other creditors were made even with them.

Le Chevalier v.
Lynch.
Dougl. 161.

And this is further illustrated by the case of *Le Chevalier v. Lynch*, where a creditor of *Dormer's*, to whom he was indebted before he became a bankrupt, attached in the island of *St. Christophers*, after the bankruptcy, a sum of money owing by *Lynch* to *Dormer*. Afterwards *Lynch* coming to *England* the plaintiff brought an action against him, to recover the debt owing by him to the bankrupt, and *Lynch* applied to the court for a rule to shew cause why the trial should not be put off, till he should be able to procure from *St. Christophers* evidence of the debt having been attached in his hands, in the manner just stated.

Lord *Mansfield* said, if a bankrupt has money owing to him out of *England*, as in *St. Christophers*, *Gibraltar*, &c. the assignment under the bankrupt laws so far vests the right to the money in the assignees, that the debtor shall be answerable to them, and shall not turn them round by saying, he is only accountable to the bankrupt. In *Scotland* they permit assignees of a bankrupt in *England* to sue for money owing to the bankrupt in *Scotland*. But if in the mean time, after the bankruptcy, and before payment to the assignees, money owing to the bankrupt

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rupt out of *England* is attached *bonâ fide*, by regular process, according to the law of the place, the assignees in such case cannot recover the debt. And the rule was made absolute.

The commissioners may sell an heriot relief, &c. due to the bankrupt, and a legacy given to the bankrupt before his bankruptcy. So where the certificate has been signed by the creditors and commissioners, a legacy left to the bankrupt before the certificate allowed by the Chancellor may be assigned. Many years may intervene between the signing and the allowance of the certificate, and large effects may, in the mean time, come to the bankrupt. And it is not like the relation of a bargain and sale, or the surrender of a copyhold.

The commissioners cannot assign lands which the bankrupt had sold by deed indented, though the inrolment was after the bankruptcy, nor lands whereon a statute has been extended, though the *liberate* was not sued till after the bankruptcy, because the goods being extended, are *quasi in custodia legis*, so as the conusors have not any power to give, sell or dispose of them; and although by the extent the conusee has not any absolute interest or property in them, until the delivery by the *liberate*, and at the return of the writ, may refuse them for being over-valued, yet that is for the advantage of the conusee, for the extent is "*capias in manus nostras ut eas liberari facias*," and they are as goods mortgaged or distrained, which cannot be forfeited by outlawry, or taken in execution from the party who hath them in mortgage, or by way of distress, without payment of the money. And when the writ

4 Com. Dig.
530.

Toulson v.
Grout.
2 Vern. 432.

Tudway v.
Bourne.
2 Burr. 718.

Audley v.
Halley.
Cro. Car. 148.

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of *liberate* is sued, it hath relation to the writ of extent, and they are *quasi* but one extent; and the goods are so bound by the extent and appraisement, that the conusor hath not any *mesne* property in them, but *secundum quid*, and not *simpliciter*; that is, if the conusee refuse to accept them; for it is a conditional writ to deliver them to the conusee, if he will accept them, and when he accepts them, they are bound *ab initia*. And when the goods are appraised, and the writ returned, it is to be understood an executing of the extent within the 21 *Jac.* 1. But so long as they remain in the hands of the conusors, they may be sold by the commissioners.

Sir W. Jones
202.

2 Show. 480.

Park. Rep. 126.
2 Show. 40.

Brassey v.
Dawson.
2 Stra. 982.

The crown is not bound by the acts relating to bankrupts, not being named in them, therefore an extent served upon the property of the bankrupt, will bind from the *teste* of the writ, and till actual assignment by the commissioners; but the King is bound by an actual assignment, because the property is then absolutely transferred to a third person.

One became indebted to the crown, and a commission of bankrupt was sued out against him, and an assignment made of his effects; and an extent issued from the crown, tested the day of the date of the assignment, and the crown was preferred.

The land-tax money in the hands of *Collectors* is a debt to the King, but the warrant of the commissioners of the land-tax is not equal to an extent so as to bind the goods from the date, but until assignment the property is in the bankrupt, and the land-tax commissioners' warrant executed before the assignment will create a lien, upon such a seizure, therefore all the assignees right is to redeem the goods which

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are in the hands of the commissioners of the land-tax for that purpose.

If a trader after an act of bankruptcy is outlawed, the forfeiture thereby incurred will not defeat his creditors under the commission, for it is his own act, and by his own default, and the voluntary permitting himself to be outlawed, shall not prejudice them.

Paine v.
Teap.
1 Salk. 108.

A candle-maker in arrear for the single duties, becoming bankrupt, and convicted for non-payment after the assignment of his effects, the double duties are a lien upon the candles, utensils and materials in the hands of his assignees, and they may be distrained.

Stracey v. Hulse.
Doug. 395.
Attorney
General v.
Senior.
Rex v. Fowler,
Doug. 400.

Where the relation of a wife gives an estate or sum of money, in trust to be laid out for the benefit of the wife, and to be settled so that after the death of the wife it might come to her children, and the interest in the mean time to be paid to such person as ought to receive the profits; the commissioners cannot assign it, for it is not liable to the creditors of the husband.

Vandenanker
v. Desbrough,
2 Vern. 96.

3 Atk. 693.

So where J. S. made his will, and devised his estate to his daughter for her separate use, exclusive of her husband, to hold the same to her and her heirs, and that her husband should not be tenant by the curtesy, nor have these lands for his life, in case he survived his wife, but that they should, upon his wife's death, go to her heirs.

Bennet v.
Davies, 2 P.W.
316.

Soon after the testator died, and Bennet the husband became a bankrupt. The commissioners assigned the lands devised, upon which the wife brought her bill against the assignees, in order to compel them to assign over the estate to her separate

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rate use. The Master of the Rolls held it to be clear, that it was a trust in the husband, and that there was no difference where the trust was created by the act of the party, and where by the act of law. And decreed a conveyance for the separate use of the wife.

Miles v.
Williams.
1 P. W. 249.

Bosvil v.
Brander.
1 P. W. 460.

But the commissioners may well assign a debt or *chose* in action to the wife of a bankrupt, and so it is of a mortgage made to her *dum sola*, for the right to the debt is plainly vested in the assignees, though the legal estate of the inheritance of the lands in mortgage continued in the wife.

When the bankrupt is possessed of property, merely as trustee for another, the commissioners cannot assign it.

Copeman v.
Gallant.
1 P. W. 315.

Thus *A.* made a bill of sale of some leases and personal estate to *B.* and *C.* in trust to pay *A.*'s debts. At first *B.* acted in the trust, but afterwards *C.* took the whole into his possession, and acted alone, and became a bankrupt.

Lord Chancellor *Parker* held this case not to be within the clause of the statute 21 Jac. 1. in regard this assignment to *B.* and *C.* was with an honest intent, viz. for the payment of the debts of the assignor.

1 Atk. 175.

It is true that this reasoning of Lord *Parker* has since been controverted, but at the same time the decision of the case is universally admitted to be right.

Ex parte Chion.
3 P. W. 187.

A trader in London having money of *J. S.* (who resided in Holland) in his hands, bought South-sea stock, as factor for *J. S.* and took the stock in his own

own name, but entered it in his account-book, as bought for J. S. after which the trader became bankrupt. Lord *Parker* determined that the trust-stock was not liable to the bankruptcy, saying it would lessen the credit of the nation to make such a construction.

Where a person is barely intrusted with goods to sell, it is not a possession that will enable the commissioners to assign the property.

For where an action of *trover* for a parcel of diamonds was brought against the defendant as assignee, under the commission of bankruptcy awarded against *Levi*, to whom the plaintiff had delivered the diamonds to sell; but it appearing that the real property of the diamonds belonged to the plaintiff, it was adjudged on argument in the King's Bench, that the general words of the clause of the 1 Jac. 1. c. 19. s. 10, 11. ought to be explained by the preamble, and that these jewels being originally the plaintiff's, and the bankrupt having no more than a bare authority to sell them, for the plaintiff's use, were not liable to the bankruptcy.

L' Apostre v.
Le Plaisirier.
1 P. W. 318,

1 Atk. 175.

Goods, &c. that have been delivered on a precedent consideration cannot be assigned, though the acceptance be after the bankruptcy.

Atkin. v.
Berwick.
1 Stra. 165.

Thus the defendants who were mercers and partners in *London*, and usually dealt with *Cripps* and *Quarme* who were also partners, living at *Penryn* in *Cornwall*. On the 7th April 1715, the defendants by their order sent certain goods, and gave them credit in their books, they being at the same time indebted to them for other goods. On the 18th May following, *Cripps* and *Quarme*, without the knowledge of the defendants, sent divers silks (the same sent

sent down in April) to Mr. Penballow at Penryn for the use of the defendants. June the 4th, Cripps and Quarne became bankrupts. June the 6th, they wrote a letter to the defendants, signifying their affairs were in a declining condition, and thinking it not reasonable, the last parcel of goods should go to satisfy their other creditors; therefore they had not entered them in their books, but left them with Penballow, who had orders to deliver them to the defendants. June the 9th, a commission of bankruptcy issued, and the effects were assigned to the plaintiff. June the 13th, the defendants received the letter which was the first notice they had of the delivery to Penballow, and as soon as possible, they signified their consent to take the goods again.

Sr. John Pratt said, the question is, whether by the delivery to Penballow without more, the property was altered, for if that delivery was countermandable, then the act of bankruptcy intervening, before any assent of the defendant's, will prevent the property, from vesting in them. And he thought, upon the circumstances, that there appears a sufficient consideration to toll a subsequent power of countermanding, and that this delivery was in satisfaction of the debt. It is true, the bare delivery will not extinguish it, because he had a power to dissent; but yet according to *Butler and Baker's* case, in the 3d report, the absolute property passes, subject to a disagreement by one of the parties. The contract does not stand open, till agreement, but is complete, unless there be an actual disagreement. The consequence of all this is, that the delivery to Penballow, to the use of the defendants,
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being before the act of bankruptcy, and founded upon a good consideration, transfers the absolute property to them, it being stated that they never disagreed.

Lord *Mansfield*, in observing upon this case, said, ^{4 Burr. 2239.} there is no doubt, but the honesty of the case, inclined the court to the judgment they gave. He said, the reason given, turns upon a subtlety, and that the court of Chancery, in such a case, would have interposed, and said, "the assignees should not have the goods, without giving the price." But that the judgment was right, though the reason ^{Cowp. 125.} was wrong.

Indeed the doctrine established in the case of *Atkin v. Berwick*, that the delivery was not countermandable, seems to be overturned in a subsequent case where it appeared,

That *Anne*, and *Isaac Scott* were merchants, and co-partners. On the 27th of *March* 1767. *Isaac Scott* ^{Hague v. Rolleston. 4 Burr. 2774.} went out with intent to abscond, and did not return till after a commission of bankruptcy had issued against him. On the 30th, *Rolleston* received a letter, written by *Isaac Scott* dated "*Dover*, 28th *March*" inclosing a bill of parcels dated the 23 *March*, of seven bags of cochineal for 1645 *l.* 14 *s.* 6 *d.* as if the defendant had purchased the same of the said *Anne* and *Isaac Scott*, and informing the defendant, that he, (*Isaac Scott*,) was gone off, and that he had deposited the seven bags of cochineal at *George Street's* warehouse, in *Rolleston's* name, and for his use, though in fact, he had not purchased, nor agreed to purchase any such goods of them. But the defendant imagined, it was intended to secure him, in part of the debt due from the partnership. On
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the 30th *March*, the defendant went to the warehouse of *George Street*, which was a public warehouse, where he found the seven bags of cochineal deposited there in his name, which he sold, and disposed of, and applied the money to his own use, in part of payment of the debt due from them to him. They had been deposited there with *Street*, on the 26th *March*, for the defendant *Rolleston*. On the 25th, *Isaac Scott* told *Street*, that they were for the defendant. But though the goods were sent to the warehouse, before *Isaac Scott's* act of bankruptcy, (*viz.* his absconding, and not returning,) yet, the defendant did not then know that they were there, and he did not declare his acceptance of them till after that time.

Lord *Mansfield* said, *Rolleston's* subsequent assent was nothing at all. The deposit was not completed antecedent to the 30th of *March*. And his assent was, to this false bill of sale, sent to him, to make him a creditor, upon a false foundation, of a dealing upon speculation.

Mr. Justice *Yates* observed, that *Isaac Scott's* act, was not complete, upon the 26th of *March*. It was revocable till *Rolleston's* assent, and he must assent to the whole contract, if he assented at all. All *Isaac Scott's* power was gone, when he wrote from *Dover*. The transaction is void, and seems a fraud; there is no account stated, a voluntary deposit is made, to favour *Rolleston*.

Burr. 2239.

If a man sends bills of exchange, or consign a cargo, and the person to whom he sends them, has paid the value before, though he did not know of the sending them at that time, the sending of them

to the carrier, will be sufficient to prevent the assignees, from taking these goods back, in case of an intervening act of bankruptcy.

But if the goods were sent, in contemplation of bankruptcy, and to give a preference to a former creditor, if the act of bankruptcy is committed before the creditor receives the property, and assents to it, the commissioners may assign it, as part of the bankrupt's effects, and it will vest in the assignees.

As where the bankrupts on 7th of Nov. 1766. indorsed a promissory note, drawn by *Bryer* and *Everard* for 600*l.* to *Temple*, to whom they were indebted to a large amount, and sent it in a letter directed to him at *Trowbridge*, which letter was carried to the post-house that morning, the bankrupts thinking that, the post day for *Trowbridge*. The letter, by the course of the post, (which went out on the *Saturday* night) was received by the defendant, some time on *Monday* the 10th, and could not be so before.

Alderson v.
Temple.
4 Burr. 2235.

The bankrupts had given *Bryer* and *Everard*, two notes for 300*l.* each, which had not been discharged. They committed acts of bankruptcy on *Saturday*, the 8th. And the said note was so indorsed, and sent to the defendant, in contemplation of their insolvency, and subsequent failure. Two questions were raised. First, whether the bankrupt's property in the note was divested, before the act of bankruptcy was committed by him? Second, whether a trader can, in any case, give such a preference as this?

Lord *Mansfield* said, it was material to observe a great deal, not stated in the case. That there was never

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never any course of dealing between the bankrupts and the defendant, by way of indorsing, or sending notes to each other. That the letter, in which the note was sent, was suppressed by the defendant. That it was not found, the note was indorsed, in payment of any debt, but only that he was a creditor to a large amount. It was not said, whether it was to be received at the risk of *Temple*, or only as agent of the bankrupts, but the letter which was in the power of the defendants, was not produced, and so the case stands, without any appropriation of the note.

His lordship further observed, that the only question he should make, was, whether under the circumstances of this case, the indorsing, and sending this note to the defendant, is fraudulent, and void, as such. And he said, he chose to put the case upon that ground, because the most desirable object in all judicial determinations, especially in mercantile ones, (which ought to be determined upon natural justice, and not upon niceties of law,) is, to do substantial justice; and therefore, he would avoid laying the stress, that might properly be laid upon the assent being necessary to complete the contract, or the want of a delivery; the solid ground of which is, that a contract shall be presumed complete, upon any distinction, where the justice of the case requires it, though there is no actual delivery.

As to the question, whether the indorsement be fraudulent; he said, that it is certain that the statutes of bankruptcy leave a trader to the moment of an act of bankruptcy committed, every power

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an owner can have over his estate. The statute says fraudulent conveyances by deed, shall be an act of bankruptcy, *other* acts that are fraudulent, are not made acts of bankruptcy, but they are attended with the consequences of fraud at law, which is, that fraud renders every act void. All acts to defraud creditors or the publick laws of the land, are void.

His lordship continued to observe, that a general question had been stated, whether in any case upon the eve of a bankruptcy, a man may do that which in consequence prefers a particular creditor; but that will depend upon the act. As if a bankrupt, in the course of payment, pays a creditor; this is a fair advantage in the course of trade, or if a creditor threatens legal diligence, and there is no collusion; or begins to sue a debtor, and he makes an assignment of part of his goods, it is a fair transaction, and what a man might do, without having any bankruptcy in view. But it never entered into the mind of any man to say, that a man in contemplation of an act of bankruptcy could sit down, and dispose of all his effects, to the use of different creditors; for that would be a fraud upon the bankrupt statutes. But if done in a course of trade, and not fraudulent, it may be supported.

But this was not done in a course of trade; for there never was any dealing between the parties in sending indorsed notes. There was no application made by the defendant. And it was done with a view to positive iniquity. Next 'tis an act that was most certainly not complete as between the parties.

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The three other judges agreed, that an assent is necessary to complete every contract; that in the present case, the defendant had his election, till the tenth of *November*; that the act of bankruptcy being committed on the eighth, the contract was incomplete, and that upon the whole circumstances taken together, the transaction was fraudulent and void.

All questions of preference turn upon the action being complete, before an act of bankruptcy committed, for then the property is transferred, otherwise an act of bankruptcy intervening, vests the property in the hands, and disposal of the law. If a man were to make a payment, but the evening before he becomes bankrupt, independant of the act of parliament, and in a course of dealing and trade, it would be good. Where an act is done, that is right to be done, and the single motive is not to give an unjust preference, the creditor will have a preference.

Cowp. 123.

Harman v.
Fisher.
Cowp. 117.

Again, *Fisher* a creditor of the partnership of *Fordyce* and Co. to the amount of 1300*l.* upon the 6th of *June* 1772. paid into their shop as bankers, the further sum of 7000*l.* and had it written in his book according to the usual course; which sum he had borrowed for the purpose of accommodating the house, during the Holidays; and at the time the money was paid in, he ordered the person who paid it, to tell them, he should not draw the money out before the *Friday* following, which they were told accordingly.

On the 9th *June*, *Fordyce* sat up all night, settling his books and affairs in contemplation of absconding;

ing; and being possessed in his own separate right of two notes for 5500*l.* and 11,702*l.* 18*s.* 4*d.* about five o' clock in the morning he inclosed them, in a letter to Mr. *Fisher*, as follows,

"Mr. *Fordyce* conceiving that the money lodged by Mr. *Fisher* with his house, on *Saturday* last, was a sum, about which perhaps even some pains had been taken to place it there, he has the honour to shew him that preference, which he conceives is certainly his due."

Fordyce delivered the letter and notes, to *Harrison* his clerk, with directions to carry them to Mr. *Fisher's* office, and give them to him. About six o' clock, the same morning, *Fordyce* absconded, and went to *France*. At half an hour after eleven o' clock, the same morning, a commission of bankruptcy duly issued against him. *Harrison*, about ten o' clock the same day, called at *Fisher's* office; not finding him at home, he returned again about twelve; but it being Holiday time, the office was shut up. On *Thursday* the eleventh, *Harrison* delivered the letter with the notes, to Mr. *James*, one of the partners of *Fordyce*, who sent for *Fisher*; when Mr. *James*, in his presence, opened the letter, and delivered it, with the notes, to the defendant; who having read the same to the company present, took them away with him. *Fordyce* was indebted to the partnership, in a larger sum than the amount of the notes in question.

Lord *Mansfield* said, the question was, whether the property of the two notes was duly and regularly transferred, before the act of bankruptcy, but that the case afforded no circumstances which could

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give rise to a question. A trader, (said his lordship,) at five o' clock in the morning, just going to commit an act of bankruptcy, orders his servant to take certain bills to a creditor in discharge of a debt pursuant to no contract, in performance of no obligation, in no course of dealing, without the privity of the creditor, or call on his part for the money, and without a possibility of the notes being delivered before an act of bankruptcy was committed. This is an order how his effects shall be apportioned after his bankruptcy. He delivers the letter to his own servant, and might have countermanded it; here it falls in with the case of *Alderson v. Temple*, and *Hague v. Rolleston*. The act was not complete, and therefore the act of bankruptcy revoked it. Suppose the drawers had been insolvent, was Mr. Fisher bound to take the notes in satisfaction of his debt? Besides, the amount of the notes exceeded the debt by several hundred pounds. The nature of the transaction upon the face of the letter, is in terms a declaration, that he means to give a preference. This the law does not allow; and if it had been by deed, it would itself have been an act of bankruptcy. But it is much stronger, where a trader mentions that to be his sole motive; and where the act cannot be completed, till after an act of bankruptcy actually committed.

Grove v. Smith.
3 Keb. 190.

Can v. Read.
3 Atk. 695.

The commissioners cannot assign a debt which the debtor paid to the bankrupt before notice of the bankruptcy; but paying a debt to one assignee will not be a discharge; for assignees of bankrupts are in the nature of trustees; and unless the debtor to the

the bankrupt's estate takes a receipt from the assignees, it is not a discharge.

If a merchant consigns goods to a trader, and before their arrival, the consignee becomes bankrupt, if the merchant can prevent the goods getting into the bankrupt's hands, the commissioner's assignment will not affect them.

As where two merchants at *Leghorn* consigned some goods to the *Bonnells*, merchants in *London*, but before the ship set sail from *Leghorn*, news came that the *Bonnells* were failed; and thereupon the *Leghorn* merchants alter the consignment of the silks.

Wiseman v.
Vandeput.
2 Vera. 203.

The court declared, in regard that the silks were the proper goods of the two *Florentines*, and not of the *Bonnells*, nor the produce of their effects, and they having paid no money for the goods, if the *Italians* could by any means get them again into their hands, or prevent their coming into the hands of the bankrupts, it was lawful for them so to do, and allowable in equity.

If goods are delivered to a carrier, or hoyman, or the master of a vessel, to be delivered to *A.* and the goods are lost by the carrier, the consignee can only bring the action; which shews the property to be in him. But though such goods are actually delivered to a carrier to be delivered to *A.* and while the carrier is upon the road, and before actual delivery to *A.* by the carrier, the consignor hears *A.* his consignee is likely to become a bankrupt, or is actually one, and countermands the delivery, and gets them back into his own possession again, no action of *trover* would lie for the assignees of *A.* because the

1 Atk. 248.

Birket v.
Jenkins, cited
Cowp. 296.

goods, while they were in *transitu*, might be so countermanded.

Chippendale brought an action of *assumpsit* for work and labour as an attorney. The defendant pleaded, that the plaintiff was a bankrupt, and averred, that the commission was still in force. The plaintiff replied, that the work and labour was done after the commissioner's assignment, and for the necessary support and maintenance of himself and his family. Rejoinder, that the plaintiff had not obtained his certificate, and thereupon a demurrer.

Lord *Mansfield* said, the only question is, whether the assignees of a bankrupt are intitled to the profits arising from his personal labour. That the assignees cannot let out the bankrupt; they cannot contract for his labour.

Mr. Justice *Buller* observed, the case in *Atkins* did not support the doctrine laid down at the bar; for Lord *Hardwicke* there says, "All his future personal estate is affected by the assignment," by which he evidently meant, that if the assignees claim it, the bankrupt must deliver it up; and so far the assignment affects it: but no other person can have the same plea. It is certain, Lord *Hardwicke* meant to go no further than the case in *Strange*, which is decisive of his meaning: therefore he was of opinion with the plaintiff, for whom judgment on the demurrer was accordingly pronounced.

An assignment or sale by the commissioners will be good, though they have not seen the goods, &c. for the statute refers it to the discretion of the commissioners, and peradventure they cannot come to the sight of them; so the sale will be good without being

*Chippendale v.
Tomlinson*
T. 15 G. 3.
D. R.

1 Atk. 253.

Ashley v. Kell.
3 Stm. 1207.

2 Rep. 26.

being made by deed inrolled. But this must be understood of a sale of goods, not of land, where inrolment is held necessary.

Where an assignment of a term by commissioners of bankrupts was made to a creditor, who, before inrolment of the deed of assignment, made a lease to the defendant, and the deed was inrolled, it was held, the lessee could not maintain an ejectment, because the lease could not have been before the inrolment, the words of the statute being, *That commissioners may sell by deed inrolled*; so that without inrolment there could be no sale.

It was formerly the practice to sell the bankrupt's estate before the commissioners, in the manner of a sale before a Master in Chancery; but the most usual method is now to sell by public auction.

The deed of assignment always contains covenants on the part of the assignees, in which the words, "jointly and severally" should be inserted, for the safety and security of each respective assignee.

2 Rep. 26.
Perry v. Bowes.
1 Vent. 260.
Sir T. Jones,
196.
Elliot v. Danby.
12 Mod. 3.

Ex parte Green.
1 Atk. 202.

Primrose v.
Bromley.
1 Atk. 90.

C H A P. XIV.

Of the Bankrupt's last Examination,
and the Power and Authority of the
Commissioners over the Bankrupt and
others.

BY the 13 *Eliz. c. 7. s. 5.* it is enacted, "That
 " upon complaint made to the commissioners,
 " by any party grieved as is aforesaid, concerning
 " the premises knowing, supposing or suspecting any
 " of the goods, chattels, wares, merchandises, or debts,
 " of such offender or debtor, to be in the custody,
 " use, occupying, keeping, or possession of any
 " person, or any person indebted, or to be in-
 " debted to any such offender, do make relation there-
 " of to the said commissioners; the said commission-
 " ers shall have full power and authority to send
 " for and call before them, by such process, ways,
 " or means, as they shall think convenient by their
 " discretion, all such persons so known, suspected,
 " or supposed to have any such goods, &c. in his or
 " their custody, use, occupation, keeping, or posses-
 " sion, or supposed or suspected to be indebted to
 " such offender; and upon their appearance to exa-
 " mine them and every of them, as well by their
 " oaths as otherwise, by such ways and means as
 " the said commissioners, or the more part of them
 " by their discretions, shall think meet and conve-
 " nient, for and upon the specialty, certainty, true
 " declaration and knowledge of all and singular
 " such goods, chattels, wares, merchandizes, and
 " debts, of any such offender as be supposed or
 " sus-

“ suspected to be in his or their custody, use, occupation, or possession, and all such debts as by them or any of them, shall be supposed or suspected to be owing to any such offender or offenders.”

13 *Eliz. c. 7. s. 6.* “ And if any such person upon such examination do not disclose and plainly declare and shew the whole truth of such things as he or they shall be examined of, concerning the premisses to his knowledge, or do deny to swear, then every such person so denying to swear, or being examined, do not declare the plain and whole truth concerning the premisses, upon due proof thereof to be made before the said commissioners, or the more part of them, by witness, examination or otherwise, as to the said commissioners, or the more part of them shall seem sufficient in that behalf, shall lose and forfeit double the value of all such goods, chattels, wares, merchandizes and debts, by them, or any of them so concealed, and not wholly and plainly declared and shewed, which forfeiture shall be levied by the said commissioners, or the more part of them, of the lands, tenements, hereditaments, goods and chattels of such person so denying to swear, or not disclosing the whole truth as is aforesaid, by such ways and means, and in such manner and form as is before limited and appointed for the principal offender or offenders, debtor or debtors; and the same forfeiture or forfeitures to be distributed or employed to and for the satisfaction and payment of the debts of the said creditor or creditors, in such like manner, rate and form as is before declared

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"clared concerning the ordering of the lands and
 "tenements, offices, fees, goods and chattels of such
 "offender or offenders, debtor or debtors, as is
 "aforesaid."

13 Eliz. c. 7. f. 7. "And be it further enacted,
 "That if at any time before or after that any
 "such person or persons departeth the realm, or
 "shall keep his or their house or houses, or other-
 "wise absent him or themselves, or take sanctuary
 "or suffer him or themselves to be arrested, outlaw-
 "ed, or yield his or their bodies to prison as is
 "aforesaid, any person or persons do fraudulently,
 "by covin or collusion, claim, demand, recover,
 "possess or detain any debts, duties, goods, chat-
 "tels, lands or tenements, by writing, trust, or
 "otherwise, which were or shall be due, belong-
 "ing or appertaining to any such offender, or of-
 "fenders, other than such as he or they can and do
 "prove to be due by right and conscience, in form
 "aforesaid, for money paid, wares delivered, or
 "other just consideration or cause reasonable, to the
 "just value thereof, before the said commissioners
 "so to be appointed, or the more part of them, as
 "is aforesaid, and the same to proceed *bona fide*
 "without fraud or covin. That then every
 "such person or persons so craftily demanding,
 "claiming, having, possessing or detaining any such
 "debt, duty, or other thing as is aforesaid, shall
 "forfeit and lose double as much as he or they shall
 "so claim, demand, detain or possess; which said
 "forfeiture shall be levied, recovered and employed
 "in manner and form as is afore rehearsed."

1 Jac.

III Jac. 1. c. 15. f. 6. " And for that the
" practices of bankrupts of late are so secret and
" so subtle, as that they can very hardly be found
" out or brought to light, and for that the former
" statute giving power to the commissioners to
" examine others than the bankrupts, hath not fully
" or sufficiently authorized them to examine the said
" bankrupt upon oath: For remedy whereof, be it
" further enacted, That the said commissioners
" may call before them, or the greatest part of them,
" the said bankrupt; and if upon lawful warning left
" or made in writing at three several times at the
" dwelling-place or house where the said bank-
" rupt, his wife or family, for the most part of his
" abode did lodge or remain, within one year next
" before he, she, or they became bankrupt, the said
" bankrupt shall not appear before the said com-
" missioners, or the greater part of them; that then
" and from thenceforth it shall be lawful for the
" greater number of the said commissioners to ap-
" point, to proclaim the said party a bankrupt, at
" such publick place or places where the said com-
" missioners, or the greater part of them shall think
" meet, warning him, her or them to appear before
" them, upon the said commission at some time
" appointed; and that if upon five several procla-
" mations made in some publick place, the party
" offending appear not before the said commissioners,
" and yield his, her, or their bodies to them or some of
" them, the said commissioners, or the greater part of
" them, shall or may award a warrant to such fit
" person or persons as they think meet, to appre-
" hend the body and bodies of the said offender and
" offenders,

Of the Bankrupt's last Examination, &c.

“offenders; and to bring him, her, or them so of-
 “fending, before the said commissioners wheresoever
 “the said party or parties offending may be found,
 “in place privileged, or not, to be examined by
 “the said commissioners, or the greater part of
 “them.”

1 Jac. 1. c. 15. s. 7. “And that it shall be
 “lawful for the said commissioners, or the greater
 “part of them, to examine the said offender or of-
 “fenders upon such interrogatories, touching the
 “lands, tenements, goods, chattels, debts, bills,
 “bonds, books of account, and such other things
 “as may tend to disclose his, her or their estate, or
 “estates, or their secret grants, conveyances, and
 “claiming of his, her or their lands, tenements,
 “goods, money and debts as they shall think meet.

1 Jac. 1. c. 15. s. 8. “And that if therein the
 “offender or offenders shall refuse to be examined,
 “or to answer fully to every interrogatory to him to
 “be administered by the said commissioners, or the
 “greater part of them, it shall be lawful for the
 “said commissioners or the greater part of them to
 “commit the said offender or offenders to some
 “strait or close imprisonment, there to remain un-
 “till he, she or they shall better conform him or
 “herself.”

1 Jac. 1. c. 15. s. 9. “And that if upon his,
 “her or their examination it shall appear that he,
 “she or they have committed any wilful or corrupt
 “perjury, tending to the hurt or damage of the
 “creditors of the said bankrupt, to the value of
 “ten pounds of lawful money of *England*, or above,
 “the party so offending, shall or may thereof be
 “indicted

“ indicted in any of the King's Majesty's courts
“ of record, and being lawfully convicted thereof,
“ shall stand upon the pillory, in some publick place,
“ by the space of two hours, and have one of his
“ ears nailed to the pillory, and cut off.”

1 Jac. 1. c. 15. s. 10. “ If any person or persons,
“ being known, supposed, or suspected, to have or
“ detain any part of the lands, tenements, or here-
“ ditaments, goods, chattels, or debts of the said
“ bankrupt, or to be indebted to, or for the benefit
“ of the said bankrupt, shall, after lawful warning,
“ to the said person or persons, given, to come be-
“ fore the said commissioners, or the greater part
“ of them, to be examined according to the intent
“ of the said statutes, refuse to come, or shall not
“ come before the said commissioners, at the time
“ appointed, having no lawful impediment, (such
“ as shall be admitted, and allowed of, by the said
“ commissioners, or the more part of them, and
“ which shall be then signified, or made known to the
“ said commissioners, at the time of their assembly;)
“ or that any such person or persons, having know-
“ ledge or warning, of any other assembly, or meet-
“ ing of the said commissioners, again, shall not
“ come, and appear before them, at such time as
“ he or she, lawfully may come, having no such
“ lawful impediment, as shall then be made known
“ to the said commissioners, and by them admitted,
“ and allowed of as aforesaid; or being come before
“ them, shall refuse to be sworn, and to make an-
“ swer to such interrogatories as shall be administered
“ unto him, or them, according to the true intent
“ and meaning of the said statutes, made in the said
“ thirteenth

Of the Bankrupt's last Examination, &c.

"thirteenth year of the reign of our said late sove-
 "reign Lady, Queen Elizabeth, or of this present
 "act; that then, it shall be lawful for the said com-
 "missioners, or for the greater part of them, to
 "commit to such ward, and prison, as to them,
 "or the greater part of them, shall be thought
 "meet, all such person and persons, as shall re-
 "fuse to be sworn, and make answer to such inter-
 "rogatories as shall be so ministered as aforesaid,
 "and also to direct their warrants to such person
 "or persons, as to them, or the greater part of them
 "shall be thought meet, to apprehend, and arrest
 "such person or persons as shall refuse to come, and
 "appear before them as aforesaid, and to bring him
 "her or them, before the said commissioners, or the
 "greater part of them to be examined as above
 "said, and upon his, her, or their refusal, to come,
 "or to be examined before the said commissioners,
 "as aforesaid, to commit the said party to refusing
 "to such prison as the said commissioners, or the
 "greater part of them, shall think meet there
 "to remain without bail, or mainprize, until such
 "time as the said person so refusing to come, or to
 "be sworn to answer before the said commission-
 "ers, shall submit him, or herself to the said com-
 "missioners, and be by them examined, according
 "to the true intent of the said statute, and of this
 "present act."

"I Ja. I. c. 15. s. 11. "Provided always, that
 "such witnesses as shall be so sent for, shall have
 "such costs, and charges, as the commissioners in
 "their discretion shall think fit; the same charges
 "to be rascably borne, by the creditors of the said
 "bankrupt,

“bankrupt, according to the proportion of each of
“their several debts. And if any person or persons,
“other than the bankrupt, either by subornation,
“unlawful procurement, sinister persuation, or
“means of any others, or by his own act, consent,
“or agreement, shall wilfully and corruptly com-
“mit any manner of wilful perjury by his depo-
“sition to be taken before the said commissioners,
“or the greater part of them, as aforesaid; that
“then the party or parties so offending, and all
“and every person, and persons, that shall unlaw-
“fully, and corruptly procure any such unlawful,
“wilful, and corrupt perjury, shall or may therefore
“be indicted in any of the King's Majesty's courts
“of record, and after his or their conviction there-
“of, shall incur such forfeiture, and receive and
“suffer such pains and punishments, as are limited
“by the statute, made concerning perjury in the
“fifth year of the reign of our late sovereign Lady,
“Queen Elizabeth.”

1 Jac. 1. c. 15. s. 12. “And be it further
“enacted, that all and every sum and sums of
“money, which shall be forfeited, by force of this
“present act, shall be sued for and recovered, by
“the said creditors only, or any of them, that will
“sue for the same, by action of debt, bill, plaint,
“or information, in any of the King's Majesty's
“courts of record, and the sum or sums of money
“so recovered, the charges of suit being deducted,
“shall be distributed, and divided towards the pay-
“ment of the said creditors of the bankrupt.”

1 Jac. 1. c. 15. s. 16. “Be it further enacted,
“that if any action of trespass, or other suit, shall
“happen

"happen hereafter, to be brought against any com-
 "missioner, authorized, by the statute made in 13
 "Elix. for bankrupts, or any other person or per-
 "sons, having authority by virtue, or under the
 "commission authorizing the said commissioners,
 "for the doing, or executing of any matter by
 "force of the said statute, or this present statute.
 "That the defendant or defendants, in any such
 "action or suit, may plead not guilty, or otherwise
 "justify, that the act or thing whereof the plaintiff
 "or plaintiffs complained, was done by the autho-
 "rity of the said act made in the thirteenth of *Eli-*
 "*zabeth*, or in this present act, respectively, with-
 "out expressing, or rehearsing of any other matter or
 "circumstance contained in either of the said acts,
 "and without inforcing him, or them, to shew forth
 "their commission, authorizing the said act or
 "thing, whereunto the plaintiff shall be admitted
 "to reply, that the defendant did the said fact, sup-
 "posed in the declaration of his own wrong, with-
 "out any such cause alledged, by the said defendant;
 "whereupon the issue in such action shall be joined,
 "to be tried by verdict of twelve men, and upon
 "the trial of that issue, the whole matter to be
 "given on both parties in evidence, according to
 "the very truth of the same; and if verdict upon
 "such issue, shall pass for the defendant, the de-
 "fendant to have his costs."

21 *Jac. I. c. 19. s. 6.* "After such time as any
 "person shall by the said commissioners executing
 "the said commission, or the greater part of them,
 "be lawfully adjudged or declared to be a bankrupt,
 "the said commissioners executing such commission,
 "shall

“ shall have power and authority, to examine upon
 “ oath, the wife and wives of all, and every such
 “ bankrupt for the finding out, and discovery of
 “ the estate and estates, goods, and chattels of
 “ such bankrupt or bankrupts, concealed, kept, or
 “ disposed of, by such wife or wives, in their own
 “ persons or by their own act or means, or by
 “ any other person or persons, and that she, and
 “ they, the said wife and wives, shall incur such
 “ danger, and penalty for not coming before the
 “ said commissioners, or for refusing to be sworn
 “ and examined, or for not disclosing the truth
 “ upon his, or their examination or examinations, as
 “ in and by the said former laws, or either of them
 “ is already made, and provided against any other
 “ person or persons in like cases.”

21 Jac. 1. c. 19. s. 9. “ For the better division
 “ and distribution of the lands, tenements, heredi-
 “ taments, goods, chattels, and other estate of
 “ such bankrupt, to and amongst his, or her credi-
 “ tors. Be it enacted that the commissioners or
 “ the greater part of them, shall and may exa-
 “ mine upon oath, or by any other ways or means,
 “ as to them shall seem meet, any person or per-
 “ sons, for the finding out, and discovery of the
 “ truth, and certainty of the several debts due, and
 “ owing to all such creditor and creditors, as shall
 “ seek relief by such course of commission to be
 “ sued forth as aforesaid.”

5 Geo. 2. c. 30. s. 4. “ Every bankrupt or
 “ bankrupts, after any assignee or assignees, of his,
 “ her, or their estate and effects, shall be chosen
 “ and appointed, as herein after mentioned, shall
 “ be,

" be, and is, and are hereby required, forthwith to
 " deliver up upon oath, (or one of the people called
 " Quakers,) upon solemn affirmation, before one
 " of the Masters of the high Court of Chancery,
 " or before any justice of the peace, within his
 " respective jurisdiction; (which oath, or affirmation,
 " they are hereby impowered to administer) unto
 " such assignee or assignees, all his, her, or their
 " books of accounts, papers and writings, not seized
 " by the messenger of the said commission, or not
 " before delivered up to the commissioners, or the
 " major part of them, and then, in his, her, or
 " their custody, or power, and discover such as
 " are in the custody, or power of any other person
 " or persons, that any ways relate to, or concern
 " his, her, or their estate, or effects. And all, and
 " every such bankrupt or bankrupts, not in prison
 " or custody, shall, at all times, after such surren-
 " der, as aforesaid, be at liberty, and is, and are
 " hereby required to attend, such assignee or as-
 " signees, upon every reasonable notice in writing,
 " for that purpose, given by such assignee or as-
 " signees, unto such bankrupt or bankrupts, or left
 " for him, her, or them, at his, her, or their house,
 " or place of abode, in order to assist, and shall
 " assist such assignee or assignees, in making out
 " the accounts of the said bankrupt's estate and
 " effects."

s. Geo. 2. c. 30. f. 6. " Provided always, and
 " be it further enacted, that in case any bankrupt
 " be in prison, or in custody, at the time of issuing
 " of the said commission as aforesaid, and is will-
 " ing to surrender, and submit to be examined
 " according

“ according to the directions of this act, and can
 “ be brought before the said commissioners, and
 “ creditors, for that purpose, the expence thereof,
 “ shall be paid out of the said bankrupt's estate and
 “ effects. But in case such bankrupt is in execu-
 “ tion, or cannot be brought before the commission-
 “ ers, that then the acting commissioners, shall, from
 “ time to time, attend the said bankrupt, in prison
 “ or custody, and take his, or her discovery, as in
 “ other cases; and the assignees of the said estate,
 “ shall have power, and are hereby required to ap-
 “ point one or more persons to attend such bank-
 “ rupt, being in prison, or in custody, as aforesaid;
 “ from time to time, and to produce to him, or
 “ her, his or her books, papers, and writings, in
 “ order to prepare his, or her last discovery, and
 “ examination, according to the directions before-
 “ mentioned; a copy whereof, the assignees of the said
 “ estate, shall apply for, and the said bankrupt
 “ shall deliver to them, or their order, ten days
 “ at least, before such last examination.”

5 Geo. 2. c. 30. s. 16. “ And be it further enact-
 “ ed by the authority aforesaid, that it shall and may
 “ be lawful to and for the said commissioners, or the
 “ major part of them, to examine, as well by word of
 “ mouth, as on interrogatories in writing, all and every
 “ person and persons, against whom any commission of
 “ bankrupt is or shall be awarded, touching all mat-
 “ ters relating to the trade, dealings, estate and ef-
 “ fects, of all and every such bankrupt and bank-
 “ rupts, and also to examine in the manner afore-
 “ said, all and every other person duly summoned be-
 “ fore, or present at, any meeting of the said com-
 “ missioners,

"missioners, or the major part of them, touching
 "all matters relating to the person, trade, dealings,
 "estate, and effects, of all and every such bankrupt
 "and bankrupts, and any act or acts of bankruptcy
 "committed by him, her, or them, and also to take
 "down, or reduce into writing, the answers of verbal
 "examinations of every such bankrupt, or other person
 "had or taken before them as aforesaid; which ex-
 "amination so taken down, or reduced into writing,
 "the party examined shall, and is hereby required,
 "to sign and subscribe. And in case any such bank-
 "rupt or bankrupts, or other person or persons,
 "shall refuse to answer, or shall not fully answer, to
 "the satisfaction of the commissioners, or the ma-
 "jor part of them, all lawful questions put to him,
 "her, or them, by the said commissioners, or the
 "major part of them, as well by word of mouth, as
 "by interrogatories in writing, or shall refuse to sign
 "and subscribe his, her, or their examination, so
 "taken down, or reduced into writing as aforesaid,
 "(not having a reasonable objection either to the
 "wording thereof, or otherwise, to be allowed by the
 "said commissioners), it shall and may be lawful to
 "and for the said commissioners, or the major part
 "of them, by warrant under their hands and seals,
 "to commit him, her, or them to such prison as the
 "said commissioners, or the major part of them, shall
 "think fit, there to remain without bail or main-
 "prize, until such time as such person or persons
 "shall submit him, her, or themselves, to the said
 "commissioners, and full answer make to the satis-
 "faction of the said commissioners, to all such ques-
 "tions as shall be put to him, her, or them, as afore-

" said,

"said, and sign and subscribe such examination as
"aforesaid, according to the true intent and mean-
"ing of this act."

5. *Geo. 2. c. 30. s. 17.* "Provided always, That
"in case any person or persons shall be committed
"by the said commissioners, for refusing to answer,
"or not fully answering, any question or questions
"put to him, her, or them, by the said commission-
"ers, by word of mouth, or on interrogatories, that
"the said commissioners shall in their warrant of
"commitment specify such question or questions."

6. *Geo. 2. c. 30. s. 18.* "Provided also, That in
"case any person or persons, committed by the
"commissioners warrant, by virtue of this or any
"other acts, now in force, concerning bank-
"rupts, shall bring any *habeas corpus*, in order
"to be discharged from any such commitment, and
"on the return of any such *habeas corpus*, there shall
"appear any such insufficiency whatsoever in the
"form of the warrant, whereby such person was
"committed, by reason whereof the party might be
"discharged of such commitment; that then it shall
"and may be lawful for the court or judge before
"whom such party shall be so brought by *habeas*
"*corpus* as aforesaid, and such court or judge shall,
"and is hereby required by rule, order or warrant,
"to commit such person or persons to the same pri-
"son, there to remain as aforesaid, until he, she, or
"they shall conform as aforesaid, unless it shall be
"made appear to such court or judge by the party
"committed, that he, she, or they have fully an-
"swered all lawful questions put to him, her, or
"them, by the said commissioners; or in case such
"person

" person was committed for not signing his, her,
 " or their examination, unless it shall appear to such
 " court or judge, that the party so committed had a
 " good and sufficient reason for refusing to sign the
 " same. And in case any gaoler or keeper of any
 " prison to whom any such bankrupt or bankrupts,
 " person or persons shall be so committed as afore-
 " said, shall wilfully suffer such bankrupt or bank-
 " rupts, person or persons, to escape from such pri-
 " son, or to go without the walls or doors of the said
 " prison, until he, she, or they shall be duly dis-
 " charged as aforesaid, such gaoler or keeper shall
 " for such his offence, being duly convicted by indict-
 " ment or information, forfeit five hundred pounds
 " of lawful money of Great Britain, for the use of
 " the creditors of such bankrupt or bankrupts."

5 Geo. 2. c. 30. §. 19. " And be it further en-
 " acted, That the gaoler or keeper of such prison as
 " aforesaid, shall, upon request of any person or per-
 " sons being a creditor or creditors of such bankrupt,
 " and having proved his, her, or their debt under
 " the said commission, and producing a certificate
 " thereof under the hands of the said commissioners,
 " or the major part of them, (which such commission-
 " ers are hereby required to give gratis), forthwith
 " produce and shew such person or persons, to com-
 " mitted as aforesaid, to any such creditor or credi-
 " tors requesting the same. And in case such gaoler
 " or keeper of such prison shall refuse to shew, or
 " shall not forthwith produce such person or persons,
 " so committed as aforesaid, and being in his actual
 " custody at the time of such request, to such cre-
 " ditor or creditors of such bankrupt, requesting to

" see

“ see such person or persons committed as aforesaid,
 “ such gaoler and keeper of such prison shall forfeit
 “ for such his wilful refusal or neglect, the sum of
 “ one hundred pounds of lawful money of *Great Bri-*
 “ *tain*, for the use of the creditors of such bankrupt
 “ or bankrupts, to be recovered by action of debt
 “ in any of his Majesty's courts of record at *West-*
 “ *minster*, in the name or names of the creditor or
 “ creditors requesting such sight of such prisoners.”

5 *Geo. 2. c. 30. s. 20.* “ And be it further enact-
 “ ed by the authority aforesaid, That all and every
 “ person and persons, who shall at any time after
 “ the time allowed to such bankrupt to surrender
 “ and conform as aforesaid, voluntarily come and
 “ make discovery of any part of such bankrupt's
 “ estate, not before come to the knowledge of the
 “ assignees, either to the said assignees, or to the said
 “ commissioners authorised as aforesaid, or the ma-
 “ jor part of them, shall be allowed five pounds *per*
 “ *centum*, and such further and other reward as the
 “ assignees, and the major part of the creditors, in
 “ value present at any meeting of the creditors shall
 “ think fit to be paid out of the nett proceed of such
 “ bankrupt's estate which shall be recovered on
 “ such discovery, which shall be paid to the person
 “ or persons so discovering the same, by the assignee
 “ or assignees of such bankrupt's estate, and the assign-
 “ nee or assignees, shall be allowed the same in their
 “ accounts.”

5 *Geo. 2. c. 30. s. 21.* “ And for the better dis-
 “ covery of the estate of a bankrupt, be it enacted
 “ by the authority aforesaid, That all and every per-
 “ son and persons, who shall have accepted of any
 “ trust

"trust or trusts, and shall wilfully conceal, or pro-
 "tect any estate, real or personal, or of any person or
 "persons becoming bankrupt as aforesaid, from his,
 "her, or their creditors, and shall not within forty-
 "two days next after such commission shall issue
 "forth, and notice thereof be given in the *London*
 "*Gazette*, discover and disclose such trust and estate
 "in writing, to one or more of the commissioners or
 "assignee of such bankrupt or bankrupt's estate, and
 "likewise submit him or herself to be examined by
 "the commissioners, in and by the said commission
 "authorized, or the major part of them, if thereun-
 "to required, and truly discover the same, shall for-
 "feit the sum of one hundred pounds, of lawful mo-
 "ney of *Great Britain*, and double the value of the
 "estate either real or personal so concealed, to and
 "for the use and benefit of the said creditors, to be
 "recovered by action of debt in any of his Majesty's
 "courts of record at *Westminster*, in the name of
 "the assignee or assignees of the said commissioners,
 "in which case full costs shall be allowed to either
 "party."

5 Geo. 2. c. 30. s. 36. Provided always, and
 "be it enacted by the authority aforesaid, That
 "after such bankrupt or bankrupts shall have obtain-
 "ed his, her, or their certificate, and the same shall be
 "duly confirmed as herein is mentioned, every such
 "bankrupt or bankrupts shall and is and are hereby
 "obliged to give his, her, or their attendance upon
 "every reasonable notice in writing, to be given to
 "him, her or them, or to be left at his, her or their
 "usual place of abode, by the assignee or assignees
 "or their order, thereby requiring him, her or them

"to attend the assignee or assignees of such bankrupt's
 "estate, in order to make up, adjust or settle
 "any account or accounts between such bankrupt
 "or bankrupts, or any debtor to or creditor of such
 "bankrupt's estate, or to attend any court or courts
 "of record, in order to be examined, touching
 "the same, or for such other business which such
 "assignee or assignees shall judge necessary for get-
 "ting in the said bankrupt's estate and effects for the
 "benefit of his, her, or their creditors, for which
 "said attendance the bankrupt shall be allowed and
 "paid the sum of two shillings and sixpence *per*
 "*diem*, by such assignee or assignees, out of the
 "bankrupt's estate. And in case such bankrupt or
 "bankrupts shall neglect or refuse to attend, or, on
 "such attendance shall refuse to assist in such dis-
 "covery without good and sufficient cause to be
 "shewn to the commissioners, or to the major part
 "of them, for such his, her or their neglect or re-
 "fusal to be by them allowed as sufficient, such as-
 "signee or assignees making due proof thereof up-
 "on oath, or, being of the people called Quakers,
 "upon solemn affirmation before the said commis-
 "sioners authorized as aforesaid, or the major part of
 "them; the said commissioners or the major part
 "of them are hereby empowered and required
 "to issue a warrant or warrants directed to such
 "person or persons as they shall think proper for ap-
 "prehending such bankrupt or bankrupts, and him,
 "her or them to commit to the county goal, there
 "to remain in close custody without bail or main-
 "prise until he, she or they shall duly conform
 "to the satisfaction of the said commissioners au-

"thorised

"thorised as aforesaid, and be by the said commis-
 "sioners, or the special order of the Lord Chan-
 "cellor, Lord Keeper, or commissioners for the
 "custody of the Great Seal of Great Britain for the
 "time being or otherwise, by due course of law
 "discharged, and such gaoler or keeper of such pri-
 "son to which said bankrupt or bankrupts shall be
 "committed, is hereby required to keep such per-
 "son or persons in close custody within the walls of
 "the said prison, until he, she or they be duly dis-
 "charged as aforesaid, under the pains and penalties
 "before-mentioned for such gaoler or keeper suf-
 "fering such prisoners committed, pursuant to this
 "act to escape and go at large."

3 Will. 426.

By the old statutes of bankrupt of 34, & 35 H. 8.
 & 13 Eliz. c. 7. the commissioners had no power
 to commit, but they had power to call before them
 persons to be examined on oath, for the discovery
 of the bankrupt's estate and effects; and if such per-
 sons, upon examination, did not disclose the whole
 truth of such things concerning which they should
 be examined, or if they denied to swear, then such
 persons were to forfeit double the value of the goods
 and debts by them concealed.

The statute 1 Jac. 1. c. 15. gives the commisi-
 oners power to commit persons refusing to be sworn,
 and make answer touching the bankrupt's estate
 and effects: this power is adopted by the statute
 4 & 5 Ann. c. 17. and by the 5 G. 2. c. 30.

Ex parte James.
 2 P. W. 511.

The wife of a bankrupt cannot be examined
 against her husband touching his bankruptcy, for
 she by the common law, cannot be a witness for or
 against her husband; and though the former statute

21 *Jac.* 1. authorizes the commissioners to examine the wife touching any concealments of the goods, effects or estate of the bankrupt, yet neither does that or any other statute extend to examining the bankrupt's wife touching his bankruptcy, or whether he had committed any act of bankruptcy, and how or when he became a bankrupt. And the commissioners having committed the bankrupt's wife as well for refusing to discover the goods and effects of the bankrupt, as to discover the time and manner of his bankruptcy; the Lord Chancellor said, as one of the reasons for committing the wife, was for her not discovering how and when her husband was a bankrupt, and she being to continue in prison till she should make this discovery, the commitment is illegal, and she ought to be discharged, which was accordingly done.

The commissioners may examine the bankrupt, though such examination will subject him to penalties, as in the case of smuggling, but that is no reason why the commission should not proceed, for if the bankrupt has an objection to the question, he must demur to the interrogatories, and the Lord Chancellor will judge of the question upon a petition; or if the bankrupt refuses to answer any question, and the commissioners commit him, and the delinquent brings an *habeas corpus*, the question must be set forth particularly in the return to the *habeas corpus*, that the judges may judge whether it was a lawful question or not.

The commissioners examination of the bankrupt is not confined to be within the time limited for the bankrupt to come in and surrender, and submit to

Brownl. 47.

Ex parte
Meymot.
1 Atk. 202.

3 Burr, 1124.

to be examined. The bankrupt must indeed surrender within the limited time, and he must submit within the limited time, to be examined from time to time, and he must upon his examination, disclose and discover and deliver up his estate and effects; but the act does not require his examination to be full and perfect, and completed within the limited time; nor is it proper that it should be so, for a man's memory may fail him at one time, and be refreshed at another, or his first answer may be equivocal, or imperfect.

The power of the commissioners is general, and not limited to the compass of time given to the bankrupt to come in.

The last examination within the limited time is material indeed to the bankrupt himself, (because he cannot afterwards contradict himself) but he may be compelled by the commissioners to make further answer after that time. The bankrupt may omit to come in till the very last minute of the time; and if he then surrenders and submits to be examined, this will save his felony; but it may be absolutely impossible for him to make a full discovery and disclosure of his estate and effects, or to give full answers to proper questions within this space of time.

The statute *7 Jac. 1. c. 15*, requires there should be interrogatories exhibited for the bankrupt's examination, but this is altered by the *5 Geo. 2. c. 30*, which enacts that the bankrupt shall answer all questions put by the commissioners, as well by word of mouth as upon interrogatories.

The

The Lord Chancellor refused to make an order that a person summoned by the commissioners to be examined, touching the bankrupt's effects, should have a copy of the interrogatories, and time to prepare himself for his examination.

Ex parte Bland.
1 Atk. 205.

If a bankrupt in his answers to his examination, will swear fully and roundly, the commissioners cannot commit him, although they may disbelieve it; for it is one thing, whether the answer be true, and another whether it be sufficient.

Ex parte Pedley.
Trin. 25 G. 3.
B. R.

But it is not every question that requires a positive and absolute answer; for where the nature of the case seems to admit a reasonable probability of forgetfulness or inattention, the bankrupt may answer according to his recollection or belief.

2 Ch. Ca. 71.

Recollection is knowledge, and must imply consciousness; but in some cases, no traces of a fact remain in a man's memory, whereby he can recollect the fact; it is possible, he may have lost all knowledge of it; and if he has, he can only answer, that he doth not know, or cannot recollect the fact. A man may recollect to a certain degree; and though he cannot recollect at one time, he may at another; and if one cannot recollect, yet he may believe he did a certain fact, because another tells him he saw him do it, and he gives credit to such assertion from a person of veracity. So in courts of justice, where a man swears he neither recollects or believes, that he did such a fact; or that he did, or did not do such a fact, to the best of his knowledge, remembrance and belief, it is certainly a full answer. A subscribing witness to a bond, may swear he has totally

3 Will. 427.

tally forgot that he subscribed his name as a witness thereto, and that he cannot swear positively, that he saw the obligor seal and deliver the bond; but seeing his own hand-writing, subscribed as a witness to the execution thereof, he may swear, he believes he saw the obligor execute the bond; and such answer would be satisfactory to the court. Suppose a banker was, upon examination, asked, whether he paid such a bill by cash or notes; and he answers, he cannot tell, but his books may inform him, or his books may be lost, and his clerks gone away from him; if on looking into his books he sees by the hand-writing of his clerks, that the bill appears to be paid by cash or notes, he then swears to his belief accordingly. But if his books be lost or destroyed, and his clerks are dead, or gone, and he then swears he cannot tell, or doth not know whether the bill was paid by cash or notes, his answer is full, and ought to be taken as satisfactory—So a merchant buying many goods may have forgot, and cannot recollect or be able to swear whether he bought a certain particular parcel and sort of goods by himself or broker.

Millar's case.
3 Will. 427.
2 Black. 881.

Thus, upon an examination to find out whether two bales of silk were, or were not the property of Cole, the bankrupt. Several questions were put to Millar. First, did you purchase by a broker, the two bales of silk? His answer was, I cannot positively recollect, whether I bought them of a broker, or not. The second question, Can you form any belief, whether you bought them, by a broker or not? His answer was, I should rather believe, I bought them by a broker. The third question, Whether

or

or not, do you believe, you bought the two bales of silk by a broker? His answer was, I cannot give any other answer, (that is to say) than I have now given, *viz.* I cannot positively recollect, &c. but I rather believe, &c. The fourth question, Whether by the words, I should rather believe, I bought them by a broker, you mean, that you do believe, the two bales of silk were bought by a broker, or whether you mean to say, you do believe that the said two bales of silk were not bought by a broker? *Mallah* refused to answer this fourth question.

The court observing, that it was unnecessary to determine, who are, or are not the final judges of the relevancy of the questions proposed by the commissioners, held the answers to be sufficient, and that upon his second answer, he would be liable to be convicted of perjury, if it could be proved that he bought the silk himself, and not by a broker, and that he had sworn to a degree of belief, sufficient to answer civil purposes.

But a general answer, by a bankrupt, to particular questions, will not be sufficient.

As, where the following question was propounded to the bankrupt, in writing. As you do admit, that since the month of *October* 1771, being the time you entered into trade, to the time of your bankruptcy, there is a deficiency of the sum of 2751*l.* notwithstanding your books do not shew such a deficiency, give a true, and particular account of what is become of the same, and how, and in what manner you have applied and disposed thereof? To which question, he gave the following answer, *viz.* My expences in sundry journeys

Langhorn's
Case.
2 Black. 589.

Of the Bankrupt's last Examination, &c

to establish trade, amount to 150*l*. The amount of discount, noting, interest on bills and notes, and premiums, given by me, is 200*l*. I have lost 15*l* by a horse. I have spent 500*l*. in housekeeping. And I have lost 1886*l*. by selling goods under prime cost. And the reason, why such deficiency does not appear in my books is, that my brother *John Langbarn*, who was in the capacity of a shopman, with me, might not be acquainted with the nature of my dealings, and hurt my credit, by divulging the same. After the bankrupt had signed the said answer, and the warrant was prepared for his commitment, he voluntarily acknowledged, to have lent to *John Croft*, the *Kendal* carrier, 100*l*. to have deposited with *Roger Bailiff*, grocer, certain hose to the value of 15*l* to indemnify *Bailiff* for being his bail. To have delivered to *Andrew Allison* boot-catcher, at the *Swan* with two necks, in *Lead-Lane*, a note of *Crawford and Co.* to be received for his use, and to have sent a quantity of hosiery goods, to the value of 22*l*. to *Robert Estwick*, to be kept for his use. The court were clearly of opinion, that these answers were not satisfactory.

Rex v. Perrot.
2 Burr. 1152.

John Perrot was committed by the commissioners, for giving an insufficient answer, to the following question. As you do admit, that you have spent the last week previous to this your examination, with *Mr. Maynard*, (one of your assignees) to settle and adjust your accounts, and to draw up a true state thereof, to enable you to close such your examination, and do likewise admit, that upon such state thereof, it appears, that after giving you credit for all sums of money paid by you, and making

making you debtor, for all goods sold and delivered to you, from your first entering into trade, to the time of your bankruptcy, it appears, that there is a deficiency of the sum of 13,513/. Give a true, and particular account, what is become of the same; and how, and in what manner, you have applied, and disposed thereof? To which question the said *John Perrot*, wilfully, and obstinately, refused to give any other, than the following general, answer. That, on goods sold this last year, I have lost upward of 2000/. And by mournings, I have lost upwards of 1000/. and that for nine, or ten years I have, and I am sorry to say it, been extremely extravagant, and spent large sums of money.

The court held this to be a proper question, and the answer very insufficient, and unsatisfactory. Afterwards the bankrupt gave a further answer, and particularized a woman, upon whom he had spent 5000/. from *December 1758.* to *December 1759.* and also particularized the times of sending, and giving it to her; but that no other person was privy to this. And that the woman, whose name was *Sarah Perrot*, otherwise *Taylor*, is dead, as he has heard. That she knew him to be a bankrupt, and never returned the money, or any part of it, to him; and that he gave it to her, for her maintenance, and expences and not for a fund for her future support, or wherefrom, he could draw any advantage. That he knew, in the year 1759. when he gave, and remitted those sums to her, that he was not worth any thing; and that he was remitting to her the money of his creditors. That

he

he was acquainted with her, five or six years, but he cannot recollect, what he gave her, or spent upon her, during the 2d. 3d. or 4th. years of their acquaintance, nor did he keep any particular account or memorandum thereof, either in those years, or in the year 1759, but speaks from memory only. That he did not take any of this money from his banker, but always took it from Mr. *Thomson*, (since deceased,) who used to sell goods for him. That all letters between him and this woman, except one or two are burnt, or destroyed.

The court held this answer to be incomplete, and unsatisfactory, and ordered him to be remanded.

The commissioners have no power, or authority, to commit one suspected, to detain effects of the bankrupt, for not attending to be examined, on their *first* summons.

Dyer v. Miffing.
2 Black. 1035.

As, where in an action of trespass, and false imprisonment, against three commissioners of bankrupts, they pleaded the commission, and that they had just cause to suspect, that the plaintiff had detained some of the bankrupt's goods, and, on the 15th of September, 1774, summoned him to attend, on the 30th September, at Southampton, to be examined, and five guineas were tendered for his expences, from London thither, which he accepted; but did not appear at the day. Whereupon they issued their warrant, on the said 30th September, to apprehend, and commit the plaintiff to Newgate, till he should submit himself, to be examined, by the major part of the commissioners, which warrant was, accordingly executed, and they justify the imprisonment under the act, 1 Jac. 1. c. 15.

The

The court held, the facts stated in the plea, were no justification, because the statute directs, 1st, a summons to the party, 2dly, on his default, or neglect, a warrant to bring him before the commissioners, in custody, or else a second summons at their direction. Thirdly, if when brought in custody, he refuses to be examined, or upon a second summons refuses to come, then, and not before, the commissioners have power to commit.

As the commissioners, in the commitment of the bankrupt, and others, have but a special authority, they must be careful not to exceed it, for an action will lie against them, in case of an illegal commitment, for, though it is hard that commissioners should be perpetually harrassed with actions, in case of an innocent mistake, it is harder for the public, if they are to be invested with an arbitrary power of committing whom, and for what they please, without being liable to answer for it. Though no man ought to suffer criminally, for an error in judgment, it is equally just, that he should make reparation civilly, for the damage which other persons have suffered by his error. The commitment therefore must pursue the words of the act of parliament; and in this, the superior courts have been very strict in their construction.

A commitment of a bankrupt by commissioners to prison, there to remain, till he conformed to their authority, was held ill, because the statute impowers them to commit, in that case, *till he submit himself, to be by them examined*. And the court said, the word *conform*, instead of the word *submit*, was well enough, because it was of the same sense,

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but,

1 Salk. 348.

Miller. v.
Seare.

2 Black. 1144.

2 Stra. 980.

Bracy's case.

1 Salk. 348.

but, as the commissioners had other authorities besides that of examining, and it did not appear, but it might require a submission to them in other respects, and for that, all powers given in restraint of liberty, must be strictly pursued, the commitment was bad.

Hollinghead's
Case.
3 Salk. 351.

So where a bankrupt was committed for refusing to be examined, and the conclusion of the warrant was: *Or otherwise discharged by due course of law.* It was held bad.

Rex v. Nathan.
2 Stra. 830.

Again, a warrant reciting that the bankrupt had been examined before the commissioners, upon his oath, upon which examination he had notoriously prevaricated, and therefore committed him without bail or mainprize, until he should make a full and true disclosure of his estate and effects, or be otherwise delivered, by due course of law, was held ill, because the commitment did not pursue the words of the statute.

Miller's Case.
2 Black. 882.
1144.

And upon the same principle, a commitment till the bankrupt should full answer make, to all such questions as shall be put to him, as aforesaid, was considered as clearly bad.

2 Black. 1145.
Lord. Raym.
467.

The commissioners of bankrupts may issue process of contempt, not to punish, but to compel an answer, they have no power of committing for punishment, and they are not judges, and therefore the cause of their commitment is traversable. They are not any where called judges, and the only authority countenancing such an idea, is Sir Edward Coke's intitling the sixty-third chapter of his 4 *Inst.* "The court of the commissioners upon the statute of bankrupts." In the context of the chapter, he

3. Co. 131.

4 *Inst.* 277.

he does not say that they are judges, but that their authority is by commission under the Great Seal, and that as their jurisdiction and power, is by force of acts of parliament, they ought to be pursued, or else they are subject to the action of the party grieved.

They are, however, a court of justice sufficient for the purpose of having their witnesses protected. 2 Black. 1142.

A question was raised, whether a bankrupt, under examination, was protected from arrests at the time, and *pando et redeundo*. The fact was, that the bankrupt was arrested upon an extent. Lord Hardwicke held, that the King was not bound by the bankrupt acts, therefore that it was merely a question at common law. And certainly at common law, the commissioners have no authority. And that their authority is not judicial, but ministerial. Ex parte Dick. 2 Black. 1142.

In a subsequent case, Lord Henley said, that the commissioners are a court of justice, sufficient for the purpose of having their witnesses protected, at least by the Court of Chancery, if not by themselves; else witnesses would be in a strange dilemma. If they do not appear, they are liable to be committed by the court for their contempt; if they do, they are liable to arrests, which would be absurd, and therefore impossible. Ex parte Stow. 2 Black. 1142.

A person who had been an assignee under a commission against Philip Sheban, and was discharged by order of the Lord Chancellor, from being assignee, and directed to convey to new assignees, and to account. After he had conveyed to the new assignees, and passed his accounts, being an incumbered person, he begged the commissioners would give him

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him their summons for the next sitting under the commission: the commissioners told him, that as he had done every thing that was necessary in pursuance of the Lord Chancellor's order, it would be of no use to him; but however, upon his importunity, they did give him their summons.

He attended on the day mentioned in the summons, and was examined two hours. As he was returning home, one *Lawn*, a sheriff's officer, arrested him; and, notwithstanding he was shewn the commissioner's summons, he damned it, and said, he did not regard it of a farthing, and kept him in custody several hours.

Upon an application to the Lord Chancellor to be discharged from the arrest, and that the officer may be censured for his abuse of the commissioner's warrant of summons, the Lord Chancellor observed, that he thought this was a matter of great consequence, and he ordered that *Lawn* should give security, to be approved of before the Master, for his attending *de die in diem*, to answer interrogatories to be exhibited concerning the contempts charged upon him. And if *Lawn* should not give such security, he ordered, that he should stand committed to the *Fleet* for the said contempt. And as no precedents had been produced of like cases before the court of Arrests, notwithstanding commissioners warrant, though it very probably may have happened, his Lordship ordered a search to be made for such cases, and what the court have done upon them, and in the mean time recommended it to the counsel for the sheriff's officer, to advise him to discharge his prisoner.

It

It is the duty of every bankrupt, to attend the commissioners at all times, till his affairs are finished, or at least to be amenable to their call. It is also his duty to assist his assignees in discovering and getting in his effects; and a bankrupt who quits the kingdom, puts it out of his own power to conform to the bankrupt laws.

2 Black. 1129.

But notwithstanding it is the duty of the bankrupt to attend the commissioners at all times till his affairs are finished, and to assist his assignees; yet there seems some doubt, whether any coercive power is extended by the 5 Geo. 2. c. 30. s. 36. to compel him to a performance of his duty, after the forty-two days, or the enlarged time fixed for his surrender are elapsed.

For where the assignee, under a commission of bankruptcy, gave notice, in writing, to the bankrupt to attend him, in order to explain several matters relating to his estate, after the forty-two days were expired, and before the certificate was signed, The bankrupt would not attend upon any other terms than signing his certificate, which occasioned an application to the Lord Chancellor, to compel his attendance.

Ex parte Turner.
1 Atk. 142.

Lord Hardwicke said, notwithstanding the 5 Geo. 2. c. 30. s. 36. has these general words, "That all and every such bankrupt, not in prison or custody, shall at all times, after such surrender as aforesaid, be at liberty, and is, and are hereby required to attend such assignee or assignees, upon every reasonable notice in writing for that purpose given, by such assignee or assignees unto such bankrupt, or left for him, her, or them, at his, her, or their

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"house or place of abode, in order to assist, and shall
 "assist such assignee or assignees, in making out the
 "accounts of the said bankrupt's estate and effects."

Yet the subsequent clause, "That every bankrupt,
 "having surrendered, shall, at all reasonable times,
 "before the expiration of the forty-two days, or such
 "further time as it shall be allowed to such bankrupts
 "to finish their examination, be at liberty to inspect
 "their books, &c. in the presence of such assignee
 "or assignees, or some person to be appointed by such
 "assignee or assignees for that purpose, and to take
 "and bring with him for his assistance, such persons
 "as he shall think fit, not exceeding two persons at
 "any one time, and to make out such extracts and
 "copies from them as he shall think fit, the better
 "to enable him to make a full and true discovery
 "and disclosure of his estate and effects. And in or-
 "der thereto, the said bankrupt shall be free from
 "all arrests, restraints, or imprisonments of any of
 "his creditors in coming to surrender, and from
 "the actual surrender of such bankrupt to the com-
 "missioners for and during the said forty-two days, or
 "such further time as shall be allowed to such bankrupt for
 "finishing his examination," seems to confine it to
 the forty-two days, or the enlarged time at most,
 and therefore the bankrupt's protection from arrests,
 &c. can extend no further. His Lordship propos-
 ed, that the assignee should undertake for the credi-
 tors who had sought relief under the commission,
 that they would not arrest the bankrupt, in which
 case he would order the bankrupt to attend, for he
 should not pay any regard to the danger the bank-
 rupt might run from his creditors at large. And his

Lordship

Lordship observed, that the clauses in the act of parliament, arising on this matter, were very darkly and obscurely penned, arising chiefly from the words *forty-two days* being thrown into the latter clause.

It has been held, that a person examined before commissioners of bankrupt, is not bound to answer any thing which tends to accuse himself; he is not to answer any thing criminal.

5 Mod. 309.

Comb. 391.

The Lord Chancellor has power to limit the commissioners of bankrupts, to make particular inquiries.

Thus the Lord Chancellor, upon a petition limited the examination of a mother to her son's trading, but would not restrain the commissioners from asking any question that might be relevant thereto.

Ex parte Parsons.
1 Atk. 204.

The depositions taken before commissioners of bankrupts, are not of a public nature, but taken by commissioners to defend themselves; therefore the court will not order a copy of them.

Bracy's case.
1 Lord Raym.
153.

So where the assignees suspecting the bankrupt had made concealment, examined a great many of his relations at *Guildhall*, and brought a bill against the same persons for discovery of those concealments.

Bowden v.
Dellew.
1 Atk. 289.

Upon a motion on the part of the defendants, that they might be allowed to look into their depositions before the commissioners, in order to make their answers consistent, Lord *Hardwicke* refused the motion, observing, that, as truth is always uppermost, they might put in an answer consistent with what they had already sworn in their depositions, supposing them to be true, and if false, they swore at their own peril.

CHAP. XV.

Of Partners.

West v. Skipp.
2 Vesey 242.

PARTNERS themselves are clearly joint-tenants in the stock and all their effects, and they are so not only of that particular stock in being at the time of entering into the partnership, but they continue joint-tenants throughout, whatever changes may take place in the course of trade; for if it was otherwise, it would be impossible to carry on the trade.

Cowp. 471.

And being seized *per my et per tout*, when an account is to be taken, each is intitled to be allowed against the other, every thing he has advanced or brought in as a partnership transaction, and to charge the other in account with what that other has not brought in, or has taken out more than he ought; and nothing is to be considered as his share, but his proportion of the residue upon balance of the accounts.

Jacky v. Butler.
2 Ld. Raym.
871.

Thus where there were two joint-partners in trade, and judgment was entered against one of them, and upon a *fiery facias* all the goods being undivided, were seized in execution, and upon application to the King's Bench by him against whom the judgment was not, the court held that the sheriff could not sell more than a moiety, for the property of the other moiety was not affected by the judgment, nor by the execution.

Haydon v.
Haydon. 1 Salk.
392.

So where *Coleman* and *Haydon* were copartners, and a judgment against *Coleman*, and all the goods, both

both of *Coleman* and *Haydon* were taken in execution. It was held by *Holt* Chief Justice and the court, that the sheriff must seize all, because the moieties are undivided, for if he seizes but a moiety, and sell that, the other will have a right to a moiety of that moiety, but he must seize the whole, and sell a moiety thereof, undivided, and the vendee will be tenant in common with the other partner.

Upon the same principle where *Richardsons* senior and junior, and one *Jonson* were partners together in trade, and *Jonson* embezzled and wasted the joint stock, and contracting private debts became a bankrupt. The court seemed to think, that out of the produce of the goods, the debts owing by the joint trade ought to be paid in the first place, and that out of *Jonson's* share, satisfaction must be made for what *Jonson* had wasted or embezzled, and that the assignees could be in no better case than the bankrupt himself, and were intitled only to what his third part would amount unto, clear after debts paid, and deductions for his embezzlement.

And this rule has been since confirmed by a decree of Lord *Talbot's*.

A bill was brought setting forth that *Goss*, *Neaulme*, *Gromvegan* and *Prevost* became partners. That *Prevost* was intrusted with the goods in the shop and warehous, but became profuse and embezzled the co-partnership stock, and applied the same to his own use, and suffered the partnership debts to be unpaid, and having contracted private debts on his own account, became a bankrupt, and a separate commission was taken out against him.

Richardson v.
Goodwin.
2 Vern. 293.

Goss v.
Dufresne
Davies 371.

A question was raised, whether *Prevost's* share of the partnership stock ought not to be applied, in the first place to pay what he was indebted to the partnership.

Lord *Talbot* ordered an account of what *Prevost* had embezzled of the copartnership estate, and that the partnership debts should in the first place be paid to the joint creditors in proportion to their debts, and as far as the co-partnership estate will extend, and that if any of the partnership estate remains, after the joint debts are paid, then the same to be divided, and the partnership to be paid out of *Prevost's* share what he had embezzled.

2 Vasey 242.

Therefore if one partner dies, though the debts and effects survive, yet the survivor is considered in equity barely as a trustee for the representatives of the deceased, upon which footing the accounts must be taken, and nothing considered as the share of the survivor till afterwards, because of the continuance of the property in the stock to the representative of the deceased partner, who has a specific lien thereon, although the survivor afterwards dies or becomes bankrupt. And if the partnership is dissolved by consent, that does not determine the legal interest, which continues as before, so that the property of the stock of the partner so going out, is not divested thereby, but he remains equally intitled as joint-tenant with the other; and in a bill for an account, the stock would be subjected for his satisfaction. And as between one partner and the separate creditors of the other, they cannot affect the stock any further, than that partner could, whose creditors they are.

An

An act of bankruptcy by one partner, is to many purposes a dissolution of the partnership, by virtue of the relation in the statutes, which avoids all the acts of a bankrupt from the day of the bankruptcy; and from the necessity of the thing, all his property being vested in the assignees, who cannot carry on a trade. But after a dissolution of partnership by agreement, by an execution, or by a bankruptcy, the partner out of possession of the partnership effects, has the same lien on any new goods brought in, which he had upon the old. One partner has not, after a dissolution, a right to change the possession, or to make an actual division of the specific effects; for one partner may be a creditor of the partnership, to ten times the value of all the effects. The other partner, in that case, can only have a right to an account of the partnership, and to the balance due to him, if any, on that account; and no person deriving under the partner, can be in a better condition than himself. His executor stands in the very same light. So the assignees, under a commission of bankruptcy, against one partner, must be in the same state. They can only be tenants in common, of an undivided moiety, subject to all the rights of the other partner.

Therefore, upon a question, whether assignees under a joint commission against two partners, taken out after the bankruptcy of both, could maintain an action of *trouar*, against a person in possession of goods under a sale, or consignment, *bonâ fide*, for a valuable consideration, and without any mixture of fraud, from one of the partners, who had not then committed any act of bankruptcy himself, but after an act of bank-

Hague v.
Rolliston.
4 Burr. 2176.
Cowp. 471.
Cowp. 448.

11 Mod. 446.

Fox v. Hanbury.
Cowp. 448.

bankruptcy committed by the other partner. The court held, the action could not be maintained, because the act of the partner, who, at the time of the consignment, had not committed any act of bankruptcy, bound both, and also because, supposing the consignment avoided, by the act of bankruptcy of the other party, then it is an action of *trouer*, by one tenant in common, against another, which cannot be.

Smith v.
De Silva.
Cowp. 469.

One of three partners in a ship and cargo, the cost and out-fit of which was 4568*l*, pays only 410*l*, in part of his third share, and gives his note for the remainder, but, before they become due, is declared a bankrupt. The other partners cannot, by voluntarily discharging the notes, stand in his place, for any share of the profits. But the assignees are intitled to a full third, both of the profits of the adventure, and the value of the ship.

Ex parte Hunter.
1 Atk. 227.

If a partner is a creditor, upon the partnership-fund, he can have no satisfaction; but out of the surplus which shall remain after the joint creditors are paid. But it seems, that where there are joint and separate creditors, if one partner lends a sum of money to the partnership, the creditors of his separate estate, have a right to this in the first place.

One partner may be a creditor of another, and prove his debt, under a separate commission.

Ex parte Drake.
cited 1 Atk. 225.

As where there were two partners, and one had taken out more money from the partnership-stock; than his share amounted to, and therefore became a debtor for so much. Lord Talbot was of opinion, that the partnership creditor had a right to come upon the separate estates of the partner, who was so indebted.

C. H. A. P. XVI.
Of Sales at Law, and in Equity, by
and against the Assignees.

IT is enacted by the 3 G. 2. c. 30. s. 26.

That where it shall appear to the commission-
ers, or the major part of them, that there hath
been mutual credit given by the bankrupt, and
any other person, or mutual debts between the
bankrupt and any other persons, at any time
before such person became bankrupt, the said
commissioners, or the major part of them, or
the assignees of such bankrupt's estate, shall
state the account between them, and one debt
may be set against another, and what shall ap-
pear to be due, on either side, on the balance
of such account, and on setting such debts against
one another, and no more, shall be claimed, or
paid on either side, respectively.

No debtor of the
bankrupt shall be endangered for the payment of
his debt, fully, and bond fide, to any such
bankrupt, before such time as he shall under-
stand or know that he is become a bankrupt.

No purchaser, for
good and valuable consideration, shall be im-
peached, by virtue of this act, or any other act
heretofore made against bankrupts, unless the com-
mission to prove him, or her, a bankrupt, be sued
forth against such bankrupt, within five years,
after he or she, shall become a bankrupt.

Of Suits at Law, &c.

19 G. 2. c. 32. §. 1. "Whereas, many persons
 "within the description of, and liable to the sta-
 "tutes, concerning bankrupts, frequently commit
 "secret acts of bankruptcy, unknown to their
 "creditors, and other persons with whom, in the
 "course of trade, they have dealings and trans-
 "actions; and after the committing thereof, con-
 "tinue to appear publicly, and carry on their
 "trade and dealings, by buying and selling of goods
 "and merchandizes, drawing, accepting, and re-
 "ceiving bills of exchange, and paying, and re-
 "ceiving money on account thereof, in the usual
 "way of trade, and in the same open and public
 "manner, as if they were solvent persons, and had
 "not become bankrupts, and whereas the permit-
 "ting such secret acts of bankruptcy, to avoid and
 "defeat payments, really, and *bona fide*, made in
 "the claim, and under the circumstances above-
 "mentioned, where the persons receiving the same,
 "had not notice of, or were privy to such persons
 "having committed any act of bankruptcy, will
 "be a great discouragement to trade and com-
 "merce, and a prejudice to credit in general:
 "No person who is, or shall be really and
 "*bona fide*, a creditor of any bankrupt, for or in
 "respect of goods, really and *bona fide*, sold to such
 "bankrupt, or for, or in respect of any bill or bills of
 "exchange, really and *bona fide*, drawn, negotiated,
 "or accepted by such bankrupt, in the usual, and
 "ordinary course of trade, and dealing, shall be
 "liable to refund, or repay to the assignee or as-
 "signees of such bankrupt's estate, any money,
 "which, before the suing forth of such commission,
 "was

“ was really, and *bona fide*, and in the usual, and
 “ ordinary course of trade, and dealing, received
 “ by such person of any such bankrupt, before such
 “ time as the person receiving the same shall know,
 “ understand, or have notice that he is become a
 “ bankrupt, or that he is in insolvent circum-
 “ stances.”

§ 60. 2. c. 30. f. 41. “ And whereas com-
 “ missions of bankrupts, and the depositions taken
 “ before the commissioners of bankrupts, and
 “ the proceedings upon such commissions, are most
 “ commonly kept by such persons as act as clerks,
 “ or secretaries to such commissioners, and by reason
 “ of the death of such clerks, or secretaries, are
 “ many times lost, and mislaid, by means whereof,
 “ such persons as have, or may purchase any mes-
 “ suages, lands, tenements, or hereditaments, un-
 “ der any commission, grounded upon the statutes
 “ made concerning bankrupts, may be disabled to
 “ make out their right and title to the same. And
 “ there being no certain place, where the creditors
 “ of any bankrupt, or any person or persons claim-
 “ ing any estate or interest, in any messuages, lands,
 “ tenements or hereditaments, by, or under any
 “ such commission, as aforesaid, can have recourse
 “ to such commission, and the proceedings there-
 “ upon. And such commissions, depositions, and
 “ proceedings, in case they can be produced, are not
 “ at present, of record, nor can be given in evidence,
 “ which may be of very evil consequence to such
 “ purchasers, or persons claiming as aforesaid. Be
 “ it therefore enacted, that upon the petition of
 “ any person or persons, to the Lord Chancellor,
 “ Lord

" Lord Keeper, or Commissioners for the custody of
 " the Great Seal of Great Britain, praying that such
 " commissions, and the depositions taken thereon,
 " or any part of such depositions, and such certifi-
 " cates, sh^d be allowed and confirmed, as aforesaid,
 " or any certificate heretofore allowed and confirm-
 " ed, or any other matters or things relating to the
 " said commissions, or the proceedings thereupon,
 " may be entered of record, the Lord high Chan-
 " cellor, Lord Keeper, or Commissioners of the
 " Great Seal, shall, and may direct, and order
 " such commissions, depositions, proceedings, and
 " certificates, or other matters, or things, to be
 " entered of record; and in case of the death of
 " the witnesses, proving such bankruptcy, or in case
 " the said commissions, depositions, proceedings,
 " or other matters, or things shall be lost, or mis-
 " laid, a true copy of the record of such commis-
 " sions, depositions and proceedings, or other
 " matters, or things signed, and attested as herein
 " after is mentioned, shall and may, upon all oc-
 " casions, be given in evidence, to prove such
 " commissions, and the bankruptcy of such person,
 " against whom such commission hath been, or
 " shall be awarded, or other matters or things;
 " any law, usage or custom, to the contrary not-
 " withstanding. And all certificates which have
 " been allowed, and confirmed, or to be allowed
 " and confirmed, and entered of record, as
 " aforesaid, or a true copy of every certificate,
 " signed and attested, as herein after is men-
 " tioned, shall, and may be given in evidence,
 " in any of his Majesty's courts of record, and
 " be

“ be without any further proof deemed, adjudged,
“ and taken to be a full and effectual bar, and dis-
“ charge of and against, any action or suit which
“ shall be commenced, or brought by any creditor,
“ or creditors, of such bankrupt, for any debt or
“ demand, contracted, due, or demandable, before
“ the issuing of such commission, unless any credi-
“ tor or creditors of the person that hath such cer-
“ tificate, shall prove that such certificate was
“ fraudulently obtained; in which case, costs shall
“ be allowed, to either party, as in other common
“ cases. And to the end, any creditor, or other
“ person or persons may know where to search, and
“ see whether such commission hath issued and find
“ what depositions have been taken by virtue there-
“ of, and what proceedings have been thereupon,
“ and whether the said bankrupt hath made such
“ affidavit, or affirmation as aforesaid, and whether
“ such certificates are entered of record as aforesaid,
“ and all other matters or things which shall be
“ entered of record in pursuance of this act, the
“ Lord high Chancellor, Lord Keeper or commis-
“ sioners for the custody of the Great Seal, shall
“ appoint a certain proper place, near the Inns of
“ court, where all, and every the matters afore-
“ said, shall be entered of record, where all persons
“ shall be at liberty to search and see if the same
“ are duly entered of record; and the Lord Chan-
“ cellor, Lord Keeper, or Commissioners, shall,
“ by a writing, under his or their hands, appoint
“ a proper person who shall, by himself, or his
“ sufficient deputy, to be approved by the Lord high
“ Chancellor, Lord Keeper, or Commissioners, by

"a writing, under his or their hands, enter of
 "record such commissions, depositions, proceedings
 "and certificates, and other matters and things,
 "and have the custody of the entries thereof, and
 "also appoint such fee and reward, to be paid to
 "such person, for his labour and pains therein, as
 "the Lord high Chancellor, Lord Keeper, or Com-
 "missioners shall think reasonable, not exceeding
 "what is usually paid in the like cases; and that
 "the person so to be appointed, and his deputy shall
 "continue to enter of record, all and every the
 "matters and things aforesaid, and to have the
 "custody of the same, so long as he or they shall
 "respectively behave themselves well, in entering
 "the same of record, and keeping such entries, and
 "shall not be removed, but by order in writing,
 "under the hand of the Lord high Chancellor, Lord
 "Keeper, or Commissioners, on a good and suffi-
 "cient cause therein specified; and in case such
 "person shall die, or be as aforesaid removed, the
 "Lord high Chancellor, Lord Keeper, or Commis-
 "sioners for the time being, shall and may, in
 "writing, under his or their hands, appoint another
 "person to enter the same, of record, who shall
 "have the custody of the entries thereof, and shall
 "have and receive the like fee, and reward,
 "for his labour and pains therein."

5 Geo. 2. c. 30.
 f. 38.

Ants 191.

Cowp. 570.

The assignees are not to commence any suit in
 equity without the consent of the major part in va-
 lue of the creditors of the bankrupt, who shall be
 present at a meeting called for that purpose.

If the assignees bring an action upon a contract
 made by the bankrupt before his bankruptcy, they
 must

must state themselves in the declaration to be assignees; but where the contract is after the bankruptcy, the bankrupt can have no property of his own, and therefore they need not, in the declaration, name themselves assignees.

Thus where the bankrupt, some years after his bankruptcy, and before he had obtained a certificate, continued to carry on his trade as a lighter-man, in buying and selling lighters; and amongst others, sold a lighter to the defendant, who paid him 30*l.* part of the purchase money at the time of the sale. Afterwards the plaintiffs hearing of the sale, applied to the defendant, and insisted upon having the lighter delivered up to them, or the purchase-money paid; but afterwards it was agreed that the defendant should keep the lighter, and pay the residue of the purchase-money to them, for which this action was brought. At the trial, the defendant's counsel objected that the action could not be maintained, because the plaintiffs did not sue as assignees, nor state themselves as such in the declaration.

Evans v. Man.
Cowp. 569.

Lord Mansfield held, the lighter was the property of the assignees, and consequently a sale by the bankrupt, was a contract as their agent by operation of law, and on their account. Therefore it was not necessary that they should state themselves to be assignees in the declaration; though in respect of the evidence in support of the action, it might be incumbent on them to prove the trading bankruptcy, and so forth; in short the whole of their case.

Mr. Justice *Willis* also thought, that the sale by the bankrupt could be considered in no other light than as agent or servant to the assignees.

Mr. Justice *Abbott* said, that in case of an action at the suit of an executor it is clear, if the action be brought on a contract made by himself respecting the goods of the testator, he need not name himself executor. Therefore he doubted in this case, whether it would be necessary for the plaintiff to go into evidence of the trading bankruptcy, &c.

For here there was an actual treaty between the plaintiff and defendant, relative to the matter in litigation, and not merely a promise by implication of law. And if so, the action is founded on an actual contract between the plaintiff and the defendant, consequently the plaintiff is intitled to recover *in jure*. In which idea the court concurred.

Lord *Parke*, Lord *Reynolds*, and Lord *Hardwick* never allowed assignees of a bankrupt to maintain *indebitatus assumpsit* (which is an action founded on contract) for money *hand sive* paid by the bankrupt, after a secret act of bankruptcy, to another person for valuable consideration, but they were obliged to bring an action of trespass or trover for the *res*.

Thus in *assumpsit* by an administrator for money had and received, &c. and *non assumpsit* pleaded, it appeared the defendant was nurse to the intestate during his sickness, and being alone in the house when he died, conveyed away money and every thing portable. The defendant objected the action would not lie, there being no colour of contract.

Lord *Hardwick*, who thought clearly by the manner

1 Ves. 329.

Cited 1 Ves.
329.

tract, but a wrongful taking or conversion, for which *trover* lay. But *Parker* Chief Justice held the action maintainable, because though the taking was wrongful, yet the plaintiff might agree afterwards, and make it right; and the bringing this action was an implied agreement; and there were only two cases, wherein an action for money had and received, &c. could not be brought, viz. for money won at play; and money paid after a bankruptcy.

But though this matter was considered formerly in that light, the practice has since much extended this action of *assumpsit*, as a very useful and general remedy. The same principle, which supports this action against one who receives money from the bankrupt himself, will support it against another, who receives it under the bankrupt. In both cases it is the property of the assignees. And though, while this action was in its infancy, the court endeavoured to find technical arguments to support it, as by a notion of privity, &c. yet that principle is too narrow to support these actions in general, to the extent in which they are admitted.

Therefore the assignees in such cases have their election, to bring either an action of *trover* or *assumpsit*, but they cannot bring both, and having brought one, and proceeded to judgment in that, it will bar the other.

It is in one case said, that if a bond was made to A in trust for B, who becomes a bankrupt, the assignees may bring the action in their own name, though B must have brought it in the name of his trustee; but this opinion has been denied to be law by Lord *Hardwicke*, who thought clearly by the

3 Lev. 193.
Holt 95.
12 Mod.
324.

2 Black. 870.

Kitchin v. Campbell.
2 Black. 830.
3 Will. 304.

Miles v. Williams.
1 P. W. 249.

1 Atk. 193.

Of Suits not Laid, &c.

manner of wording the clause, relating to the commissionere power of assignment of a bankrupt's effects, 1 Yac. 1. that assignees can only have the like remedy to recover a debt as the bankrupt himself might have had, the words: "as the party himself might have had" in the conclusion of that clause, appearing to him to be meant of the bankrupt.

Atk. 364.

Bankruptcy in the plaintiff does not abate a suit in equity, and therefore an order for dissolving an injunction *nisi* will be made absolute, notwithstanding the plaintiff is a bankrupt, unless he or his assignees shew cause.

1 Atk. 88.

New assignees under a commission of bankruptcy upon the death or removal of the former, shall, in filing a supplemental bill, be intitled to the benefit of the proceedings in a suit begun in the time of the first assignees, for they cannot revive, because there is only an artificial privity between the bankrupt and the assignees, and it would be hard, if there have been pleadings, examinations, &c. in a former suit, that the new trustees should not have the benefit of them by a supplemental bill. If the court, upon the death or discharge of assignees of bankrupts, should say that they all must go for nothing, and that the new assignees must begin again by original suit, then all the expences and charges in the former suit would be absolutely thrown away. But in the present method, though the representative of the former assignee is not liable for costs, yet by a supplemental bill, the bankrupt's estate is liable in all events to answer them.

An

Of Suits at Law, &c.

313

An action for money had and received will not lie at the suit of assignees, to recover the value of India stock, re-transferred by a trader after his bankruptcy to a person who intrusted him with it for the purpose of voting. For it is a new species of property arisen within a few years, it is not money; perhaps an action might be framed so as to come at the justice of the case, but an action for money had and received will not lie in this case where no money was received.

Nightingale v. Devisme,
5 Burr. 539.

An action of *assumpsit* will lie for a creditor's share against the assignees, under an order of commissioners of bankrupt for a dividend, and in such action the proceedings before the commissioners are conclusive evidence of the debt. Nor can the assignees set off a debt from the plaintiff to themselves, in their private capacity.

Brown v. Ballew,
Doug. 393.

Or the Chancellor upon petition may make an order upon the assignee to pay the money. And the court will not suffer the assignee, who is an officer of the court, and an officer of the commission, to stop a person's share in the dividends on account of his own private debt, which is owing to him from that person, for he has his remedy at law, and ought not to blend his own private affairs with the commission to which he is only a trustee.

Ex parte White.
1 Atk. 90.

Where a solicitor carries on suits in equity for an assignee, without the authority of the majority in value of the bankrupt's creditors, present at a meeting summoned for that purpose, the estate of the bankrupt is not liable for his bill for such suits; but he has a personal remedy against the assignee who employed him.

Ex parte Whitechurch
1 Atk. 210.

Bankruptcy
1822

and had assigned intended to have money paid out of
 certain shares, which had been paid therein; on the
 commission rule, whether upon the plaintiff (the bankrupt)
 had proceeded to trial, and recovered a large sum,
 and afterwards became bankrupt. The objection was
 opposed by the plaintiff's attorney, who insisted,
 that he ought to be paid his bill. A rule was made
 to refer the bill to be taxed, the plaintiff's attorney
 to allow monies received by him as plaintiff in part,
 and then to be paid out of the monies in court, the
 residue to be paid to the assignees.

Ball, N. P. 1821

In actions brought by assignees, it is necessary to
 prove the bankrupt a trader within the statutes, the
 act of bankruptcy, that the commission was regular-
 ly granted, the assignment to the plaintiffs, and prop-
 erty in the bankrupt.

It is an established rule, that assignees must prove
 the petitioning creditor's debt, by the same evidence
 which must have been produced in an action against
 the bankrupt.

Abbot v.
Flumbe.
Dougl. 205.

Therefore, in an action of *traverse* by assignees
 of a bankrupt, to prove the petitioning creditor's
 debt, a witness was called, who swore, that the
 bankrupt had acknowledged to him, that he owed
 the debt upon which the commission had been sued
 out. On being asked how the debt arose, the witness
 said, by bond; and the bond was then produced.
 The subscribing witness was an attorney, who lived
 in *Somersetshire*. He was not called, nor was there
 any proof that he had been required to attend, or that
 he could not have been procured.

Upon a question in court, whether this evidence
 was sufficient? Lord *Mansfield* said, the objection
 was

was capious; but it is a technical rule, that the subscribing witness must be produced; and it cannot be dispensed with, unless it appear that his attendance could not be procured. *Mr. Justice Ashurst* added, That if the evidence of the subscribing witness was to be dispensed with by this confession of the bankrupt, the defendant would be deprived of the benefit of cross-examining him, concerning the time of the execution of the bond, which might be material.

The depositions of the act of bankruptcy, when recorded according to 5 Geo. 2. c. 28. § 41. are evidence in an action at law to prove the precise time when the act of bankruptcy was committed, if specified therein; because the witness cannot tell his story before the commissioners, without saying when the act of bankruptcy was committed. He must mention that naturally, and of course, and therefore is the more likely to speak the truth. In many cases, it being an act of bankruptcy, depends upon the time; as keeping house on a Sunday cannot make a man a bankrupt. The legislature considered the commissioners as indifferent persons, examining the witnesses with impartiality, and taking care of the interests of all parties: however, it has not been determined, whether the depositions may be contradicted.

The author of the reports above cited, very ingeniously observes a remarkable inaccuracy in this section of 5 Geo. 2. c. 28. for after prescribing the manner of entering the commission, deposition, proceedings, and certificate of record, it says, "That true copies, signed and attested as herein after mentioned,

Janfon v.
Willson,
Doug. 246.

"shall, shall and may be given in evidence;" but there is not in the subsequent part of the clause, nor of the act, any provision for attesting or signing the entries so made. It is only enacted, "That the Chancellor shall appoint a person, who shall, by himself or his deputy, by a writing under his or their hands, enter of record such commissions."

Field v. Curtis.
8 Strange 829.
Assignees of Gill
v. Woodmafs,
ruled by Lee
C. J. Mich.
Sittings, 1752.

A bankrupt cannot be a witness to prove his own act of bankruptcy; but if the defendant calls him, he waives all objections to the competency of his evidence, and the bankrupt may be cross-examined by the plaintiffs to that fact.

Bull. N. P. 43.
Cowp. 71.

The bankrupt cannot be evidence to swear property in himself, or a debt due to himself, without having obtained his certificate, and giving a release of his share in the surplus and the dividends, for else he is plainly interested; but he may prove property in, or a debt due to another. And it is a settled rule, that a bankrupt may be a witness to diminish the fund, though he has not obtained his certificate; because, in so doing, he speaks most manifestly against himself; for he may not only defeat his title to the benefit which the law allows him, if the fund is of a certain amount; but he hazards the displeasure of all his other creditors.

Walker v.
Walker, cited
Cowp. 70.

Butter v. Cooke.
Cowp. 70.

If a bankrupt has had his certificate, and received his allowance, his evidence will still be admissible; for he is not bound to refund.

Ruffel v. Ruffel.
Brown 269.

Ryal v. Larkin.
1 Will. 155.
Bull. N. P. 177.

The statute for setting off mutual debts, does not extend to assignees of bankrupts; for they cannot be considered as mutual debts; for where there are mutual debts, there must be mutual remedies; but the case of bankrupts is expressly provided for by 5 Geo. 2.

et 30. f. 28. and in an action at law, the defendant may set off his demand against the plaintiff; and there is no occasion to come into a court of equity for an injunction to the suit at law, and for an account.

Lock v. Bennet.
2 Atk. 49.

A demand against a bankrupt cannot be set off in an action by his assignees for *trover* and conversion, subsequent to the bankruptcy, of effects belonging to the bankrupt estate.

Thus where the captain of the ship *Africa*, bespoke and directed repairs to be done to the ship before she set out upon her last voyage, and likewise directed her to be supplied with stores and provisions, for which he was liable as well as the owner. And he had likewise wages due to him. The owner of the ship became a bankrupt, and after the bankruptcy, and the demand of the ship by the assignees, the captain paid the creditors their bill for stores and repairs. The question was, whether in this action the captain could be allowed to retain, and have deducted out of the damages which ought to be given for the value of the ship, the several sums paid for repairs, stores, &c. or any of them; or whether any of the above articles were so far a lien upon the ship, as to justify his refusal to deliver the ship to the assignees without being paid?

Wilkins v.
Carmichael.
Doug. 97.

The court were of opinion there was no lien, and that the money paid by the captain could not be set off.

A broker is intitled to deduct money due from the bankrupt to him for commission money out of what he collects on the policy, where it is put into his hands to receive the money from the under-writers.

As

Whitcham
Vaughan
Trin. 25 G. 3.
D. R.

One who was possessed of a note at the time
As where *Moffat* put a policy of insurance on
goods on board *The Earl of Harford*, into the hands
of *Vaughan* his broker, that he might get it under-
written, which was done by different persons, *Vaughan*
himself being one. The ship was lost before the
bankruptcy, but the loss to which the under-writers
were liable, being an average loss, the actual sum
due from them on the policy, was not liquidated and
ascertained, till a time subsequent to the bankruptcy,
when the policy was put into *Vaughan's* hands as
broker, that he might collect what was due on it
from the under-writers.

Vaughan being then in possession of the policy, and
having received the money from the under-writers,
refused to deliver the money to the assignees, unless
they would deduct a debt due to him from *Moffat*
for commission-money. This the assignees refused to
do, and it became a question, whether he was intitled to
insist upon such deduction?

The court said, this is mutual credit, it is an
lien in a mutual account, and that a broker has a
lien upon the policy, and although in this case he
had given the policy up, yet, when it came again
into his hands, the lien revived.

If *A.* is debtor to a bankrupt before his bank-
ruptcy, and creditor to him upon a contingency
that takes place after the bankruptcy, he shall not
be at liberty to set off under the clause relating to
mutual credit.

A note indorsed to a debtor of the bankrupt's
after the bankruptcy, cannot be set off against a de-
mand by the assignees.

One *Scott* who was possessed of a note at the time of the bankruptcy, applied to *Chambers* who he knew owed more money to the bankrupt's estate, desiring him to take the note and claim a credit for it, in settling with the assignees. *Chambers* scrupled it, and the bankrupt would not consent; at last *Chambers* ventured upon *Scott's* indorsement (who he said was a good man) to pay the 127*l.* and upon a notice to set off produced the note. The Chief Justice considering it might be dangerous to inquire into the precise time of indorsing negotiable notes, directed the jury to allow it, which with much difficulty, and merely in deference to his opinion they did. But upon a motion for a new trial the verdict was set aside, with the concurrence of the Chief Justice.

Where there is a plain mutual credit, one party shall set off against the other, and the statute is not to be construed of dealings in trade only, or in case of mutual running accounts, but in all cases of mutual credit the balance only shall be paid.

Therefore where *Samuel Jones* borrowed 1500*l.* of *Cogg* on mortgage, and *Cogg* owed about 1400*l.* to *Jones* upon notes, *Jones* was allowed to set off his demand upon the notes against the mortgage.

But if *A.* and *B.* are joint traders, and *J. S.* is indebted to *A.* and *B.* on their joint account 100*l.* and *A.* owes said *J. S.* 100*l.* on two separate accounts; *J. S.* cannot deduct so much as *A.'s* proportion of the 100*l.* comes to out of the joint debt; because the co-partnership debts of *A.* and *B.* are to be first paid before any separate debts; but if there be a surplus beyond what will pay the partnership debts, then out of *A.'s* share of the surplus, *J. S.* may deduct the separate debt of *A.*

Marsh v. Chambers
2 Str. 329.
1 Atk. 126.

1 P. W. 326.
Billon v. Hyde,
1 Atk. 126.
1 Atk. 127.
1 Vesey 375.

Lanelborough v. Jones.
1 P. W. 325.

Ex parte Prescott
1 Aik. 231. n. 2.

If a bond is given from a bankrupt to A. payable at a future day, and a debt owing from A. on simple contract to the bankrupt for a less sum, the account between A. and the bankrupt shall be first stated, and one debt set against the other, and A. shall be intitled to a proportionable dividend of such bankrupt-estate *pro rata* with the other creditors, *without* counting the bond payable at a future time, after the rate of 5 *li.* per cent. for what he shall receive, to be computed from the actual payment thereof to the time such debt should or would have become payable in and by such bond. These are the words at the conclusion of the clause in the statute 7 Geo. 1. relating to creditors whose debts are payable at a future day. Therefore if A. is debtor to the bankrupt by bond payable at a future day, and a creditor upon his estate by simple contract for a less sum, it would not be just and equitable that he should be obliged to prove his debt under the commission, and receive perhaps only 1 *s.* in the pound, and yet when his bond becomes due, pay the whole debt, principal and interest to the assignee under the commission. And though such a debt, may in strictness be said not to be a mutual debt, it is a mutual credit; the bankrupt gives a credit to the party in consideration of his bond, though payable at a future day, and he gives the bankrupt credit upon simple contract, therefore it is a case within the equity of the 5 Geo. 2. c. 30.

Packers may retain goods till they are paid the price and labour of packing, and other traders may retain goods in the same manner, and the goods are in the hands of the trader in the nature of a pledge

pledge for the price of packing, &c. and "mutual credit" does not seem confined to pecuniary demands; and if a man has goods in his hands belonging to a debtor of his, which cannot be got from him without an action at law or bill in equity, it is very hard it should not be considered as mutual credit. Lord Cowper's opinion in *Demainbray v. McCaulfe* plainly favours the idea of extending the construction of the words "mutual credit," for he looked upon the jewels pawned, and notes given as an account current between them.

2 Vern. 691.

Therefore in a case where Mr. Norton Nichols borrowed of Deane the sum of 500 l. for which he gave a note of hand, and afterwards he sent him six bales of cloth to pack and press. Some time after Nichols paid off a part of the 500 l. and interest for the remainder, and then asked him if he would have the whole paid off, which Deane declined, and then the old note was delivered up, and a new one given for the remainder. Before the remainder was paid, and before the six bales were taken out of the petitioner's custody, Nichols became a bankrupt.

Ex parte Deane,
1 A. & E. 211.

Lord Hardwick said, that if there had been no bankruptcy in an action for these goods, the debt could not have been set off, yet as the clause of mutual credit has been extended, he thought the case might come within that rule, especially as there is an account between the parties on the one side of 19 l. due for packing, &c. and on the other side, much about the same sum due to the bankrupt's estate for wine.

A company incorporated by charter, or act of parliament, cannot prevent the assignees of a bank-

Sir Justice
Beck's case.
1 Eq. Ca. Abr. 2.

rupt.

rupt from selling any stock he is intitled to on account of a demand they may have against the bankrupt, for the rule relating to mutual credit does not relate to this case.

Indeed where there is an express bye-law to subject the stock of each member to satisfy the debts, they should owe to the company, it would make a difference.

That the plaintiff as assignee of the effects of Sir *Stephen Ewart* a bankrupt, brings his bill against the *Hudson's Bay Company*, to oblige them to suffer him to transfer stock. The Company insisted that Sir *Stephen Ewart* was their banker, and greatly indebted to them, and that they had a bye-law to subject the stock of each member to satisfy the debts he should owe to the Company, and they also insisted upon the clause in the bankrupt act, which directs the commissioners to state the account between mutual dealers. And therefore, that they were intitled to hold the stock, and account only for the balance, if any shall appear against them. And of this opinion was the court, and decreed accordingly.

Where debts are due in different rights, they cannot be set off.

Thus Mrs. *Bishop* was the residuary legatee and surviving executrix of her husband, to whom *Church* and one *Owen* had given a bond for payment of a sum of money. *Church* one of the obligors died, and Mrs. *Bishop* was indebted upon her own private account to *Owen* who was become a bankrupt.

Lord Chancellor would not permit Mrs. *Bishop* to set off the joint bond which she had as executrix, saying

*Gibson v.
Hudson's Bay
Company.
2 Burr. 645.
1 Eq. Cas. 269.*

*Bishop v.
Church.
3 Atk. 692.*

saying that there was no mutual credit between the parties; and if the court of Chancery was to go into inquiries of this sort, an account must be taken of the testator's whole estate, till it was seen if there was a surplus so as thereout to make a set-off. And another consequence would arise, it is often doubtful whether executors can take a residue, which might draw on infinite expence, if it should be allowed of in the like instances.

Natural equity is much in favour of liens, so that courts of justice have always leaned that way, as far as was consistent with positive law. They will therefore imply a contract of lien from the general course of trade, or from the nature of the particular mode of dealing between the parties. So where one has acted as factor for another, every thing in his hands is construed to be a pledge.

1 Black. 553.

But a miller cannot retain corn for other debts than the price of grinding; nor a dyer, but for the price of dying.

Ex parte
Ockenden.
1 Atk. 235.
Green v.
Farmer.
1 Black. 651.

And if a person having by law a lien, parts with the possession of the property, his lien is gone, and he remains on the footing of common creditors.

As where a person who had repaired a ship belonging to a bankrupt, insisted upon a specific lien on the ship for the repairs, and that he should not be obliged to prove it as a debt under the commission, notwithstanding after the ship had been repaired, it was delivered to the bankrupt.

Ex parte Shanks,
1 Atk. 234.

But Lord *Hardwicke* was of opinion, he had no pretence under the general law of the realm to retain, till he is paid, because it is out of his possession; and though the law of *Holland* gives a per-

Y

son

son who repairs a house or ship a specific lien, there is no such law in England.

In actions brought by the assignees, it frequently becomes material to consider the relation of the act of bankruptcy, which the court will not upon motion assist, because, it is a case *strictissimi juris*.

Clarke v. Ryal.
1 Black. 642.

Thus on a judgment against the defendant, who was then a prisoner, a *fieri facias* was sued out by the plaintiff, and his goods were taken and sold by the sheriff. The defendant still continued in prison, till two months were elapsed; whereby he became a bankrupt, and a commission issued against him.

Upon a motion that the sheriff might pay over the money to the assignees, they (as was insisted) being intitled thereto, by relation to the time, when the defendant first went to prison. On shewing cause, it was alledged, that before the two months were expired, or the commission issued, the sheriff's officer had paid the money to the plaintiff, which fact was sworn by the officer, though there appeared some suspicious circumstances.

Upon this the motion was changed, and the court was prayed to direct an issue to try whether the money was *bona fide* paid to the plaintiff before the commission issued.

But the court said, the relation of which the assignees would take advantage is an odious one. Therefore they would not assist it. And that the assignees could not bring an action against the sheriff for the money; because that would affirm the execution, as therefore they could have no advantage

tage by the regular course of law, they should not obtain it upon motion.

The legal effect of an act of bankruptcy committed by a trader, is to put it in the power of the commissioners to divest the property of the bankrupt by relation, which may go back to a great length of time, and avoids all acts done by the bankrupt, without regard to the fairness or fraud of them. So that a sale of goods by the bankrupt, after the act of bankruptcy committed is a sale of the assignee's property, for which they may maintain *trouvé*. And it is the same as to the payment of money; but the rigour of this rule has been relaxed by the legislature, whereby it is provided, that the relation of the act of bankruptcy shall not extend to the prejudice of any debtor of the bankrupt, who paid his debt to the bankrupt after the act committed, or to purchasers for valuable consideration, unless the commission is sued out within five years after the bankruptcy, or to payments *bona fide* made by the bankrupt in the course of trade without knowing of it.

This relation does not only avoid acts *in pais*, rescinding every contract made or completed after the act of bankruptcy, but also acts on record, and legal acts done by the bankrupt, such as judgments, so that if execution is taken out after the act committed upon a judgment before, that execution is undone and set aside.

The acquisition of property by act of law, has the same operation as an acquisition by the act of the party; if it be completed before the act of bankruptcy it is good; if not completed, it is otherwise.

1 Versey 328.

2 Black. 329.

1 Jac. 1. c. 15;
s. 14.

21 Jac. 1. c. 19;
s. 14.

19 Geo. 2. c. 38;
s. 1.

Cont. 2 Vain.
229.

1 Black. 67.

otherwise. Therefore an execution executed before an act of bankruptcy is not avoided by the commissioner's assignment.

1 Black. 67.

1 Black. 68.

The sheriff who executes a *fiari facias* upon the bankrupt's goods, after an act of bankruptcy committed, and before the issuing of the commission, is not a trespasser, but the assignees may maintain *trover* against him.

Cooper v.
Chitney.

1 Burr. 20.

1 Black. 65.

Thus in an action of *trover* against the sheriff of London, by the assignees of one *Johns* a bankrupt, for goods sold by them under an execution.

It appeared that on the 4th of December, 1753, *Johns* became a bankrupt, on the 5th December the judgment was entered against him by *Godfrey*, and the *fiari facias* was executed the same day. On the 8th December, the commission was taken out, and the same day an assignment was made.

On the 28th of December the sheriffs sold the goods; and on the 20th January returned that they had levied the money.

The court held the conversion or act of sale clearly wrong; and that *trover* was maintainable by the assignees. And that the saying of Lord Holt, "that no action will lie against the sheriff acting under process, but solely against the vendee," was a mere *obiter* note taken at *nisi prius* by Lord Raymond, when a very young man, and seems to have been collateral to the case in hand, which turned upon a supposed collusion, between the plaintiff and defendant, as may be conjectured from the fourth resolution therein.

Cole v. Davies.

1 Mod. Raym. 724.

It is true, that formerly this seems to have been a litigated point, and much doubt was entertained upon the subject, whether an officer executing the process of the court is not so far justified thereby, as not to be subject to an action of any kind.

As where *J. S.* committed an act of bankruptcy on the 6th *June*. On the 11th *June J. D.* sued a *fiery facias* tested the 4th *June*, but really sued out the 11th *June*, and by virtue thereof, the sheriff took the goods, and afterwards a commission of bankruptcy was sued, and the goods assigned by the commissioners. The court held that the taking by the sheriff was lawful by virtue of the writ, and that the issue was found for him; for he, being an officer, was obliged to execute the writ, and could not know of the act of bankruptcy, or that any commission would ever be sued out.

Bailey v.
Bunning.
1 Lev. 173.

All the reports of this case are confused; but in *Philips v. Thompson* it is said, that the case of *Bailey v. Bunning*, was resolved only in excuse of the sheriff, and not that the goods were bound by the delivery of the writ. And Lord *Mansfield*, in *Cooper v. Cbitty*, made the same observation.

3 Lev. 192.

So the case of *Lechmere v. Thorswood*, is put singly, upon making the officers who had good authority, and took the goods lawfully, trespassers by relation.

1 Burr. 35.

1 Show. 12.
Comb. 123.
1 Burr. 35.

No difference can be made between the sheriff and the under-sheriff, and where the officer acts fairly, and is under real difficulties how to conduct himself, the court will endeavour to help him as far as possible; but where he has acted dishonestly, the court

Timbrell v.
Mills.
1 Black. 305.

will not assist him, by taking notice in a collateral way, of a commission of bankruptcy.

Barwell v.
Ward.
3 Atk. 260.

Where a trader commits an act of bankruptcy, by lying in prison for two months, it relates to the first day of his surrender, so as to over-reach all intermediate transactions.

Payment of money by a father, on putting out his son apprentice, has been held good against the assignees, though a secret act of bankruptcy had been committed some time before.

Rider v. Fowle.
3 Lev. 58.

Thus, in an action of *traverse* for 120*l.* the case was, that *Portman*, a goldsmith, having committed an act of bankruptcy in 1673, kept on his trade; and in 1677, bound his son apprentice to another goldsmith, and paid with him 120*l.* a usual sum given in such cases; and afterwards in 1769, a commission of bankrupt was sued out against *Portman*, and he was found bankrupt; and the 120*l.* was assigned by the commissioners to the plaintiff, as the money of *Portman* in the hands of *Fowle*. And the whole court were of opinion, this money was not assignable; being paid so long before the commission, when neither he himself, nor no one else, suspected his becoming bankrupt; also, the money is paid to put his son apprentice to the same trade which his father used, and was the usual sum given in such cases; so that no fraud can be intended; and the master is bound by the covenants to maintain his apprentice, and instruct him in the trade; and it would be unreasonable to deprive him of the money which was given him upon that consideration, since there was no fraudulent intention.

A pur-

A purchaser for a valuable consideration, without notice of an act of bankruptcy, shall not be obliged in equity to discover any thing that may tend to deprive him of a legal title; but every advantage shall be left him to defend himself. Indeed where a commission is actually taken out, the case is very different, because that is a public act, which all are bound to notice; but an act of bankruptcy may be so secret as to be impossible to be known.

Forrest 69.

Therefore, upon a bill filed against *Ward* and others, to set aside several conveyances which *Ward* and the other defendants in trust for him, had obtained of *Tyssen*, after his bankruptcy, and also without any consideration. The defendant *Ward*, pleaded himself a purchaser for a valuable consideration of all the estates in question; and also that he had no notice of *Tyssen's* being a trader, or of his having committed any act of bankruptcy.

Collet v.
De Goules and
Ward.
Forrest 65.

Lord *Talbot* said, that *Ward*, having the legal estate in him, shall by that be protected for so much as he really and *bonâ fide* paid *Tyssen* before notice of *Tyssen's* bankruptcy; and directed an issue upon the point of notice, &c.

So where *James Bodington*, on 1st *May*, 1701, committed an act of bankruptcy, although he afterwards paid many thousand pounds, and appeared publicly on the Exchange; and afterwards, on the 1st *December*, 1707, made a settlement on the defendant his son, on his marriage.

Wilker v.
Bodington.
2 Vern. 599.

The settlement was thus: *James Bodington* had, on his own marriage, settled houses, in *Lotbury*, on *Joseph* and *Peter Gray*, in trust, to secure 2000*l.* to his wife, if she survived; and now reciting that settlement,

clement, with the privy of the *Grays*, who were parties to it, he assigns all his estate, right, title, and interest, to the wife's relations, for the benefit of *Harry* for life, and of his wife for life, &c.

The plaintiff, being the assignee under a statute of bankrupt taken out against *Bodington*, the question was, whether a court of equity would decree the *Grays* to assign the term to the plaintiff, or suffer it to rest in them to protect the settlement.

Lord Chancellor said, he took it to be the rule in equity, that where a man is a purchaser without notice, he shall not be annoyed in equity, not only where he has a prior legal estate, but where he has a better title or right to call for the legal estate than the other. And therefore dismissed the bill.

C H A P. XVII.

Of the Certificate.

BY the 5 Geo. 2. c. 30. s. 10. it is provided and enacted, " That no discovery upon oath, or
" solemn affirmation, to be made by any bankrupt
" or bankrupts, of his, her, or their estate and ef-
" fects, pursuant to this act, shall intitle such bank-
" rupt or bankrupts to the benefits allowed by this
" act, unless the commissioners authorized by such
" commission, or the major part of them, shall, in
" writing under their hands and seals, certify to the
" Lord Chancellor, or Lord Keeper, or Commis-
" sioners for the custody of the Great Seal of *Great*
" *Britain* for the time being, that such bankrupt or
" bankrupts, hath or have made a full discovery of
" his or her estate and effects, and in all things con-
" formed himself, herself, or themselves, according
" to the directions of this act, and that there doth
" not appear to them any reason to doubt of the
" truth of such discovery, or that the same is not a full
" discovery of all such bankrupt's estate and effects;
" and unless four parts in five in number and value
" of the creditors of such bankrupt or bankrupts who
" shall be creditors for not less than twenty pounds
" respectively, and who shall have duly proved their
" debts under such commission, or some other person,
" by them respectively duly authorized thereunto,
" shall sign such certificate, and testify their consent
" to such allowance and certificate, and to the said
" bankrupt's discharge, in pursuance of this act, to
" be

Of the Certificate.

“ be also certified by such commissioners; but the
 “ said commissioners shall not certify the same, till
 “ they shall have proof by affidavit or affirmation, in
 “ writing, of such creditors, or of the person by
 “ them, respectively authorized for that purpose,
 “ signing the said certificate, and of the power and
 “ authority by which any person shall be authorized
 “ by any creditor to sign such certificate for any
 “ creditors; which affidavit or affirmation, together
 “ with such warrant or authority to sign, shall be laid
 “ before the Lord High Chancellor, Lord Keeper,
 “ or Commissioners of the Great Seal, with the said
 “ certificate, in order for the allowing and confirm-
 “ ing the same, and unless such bankrupt make
 “ oath, or, being of the people called Quakers, so-
 “ lemnly affirm in writing, that such certificate and
 “ consent of the creditors thereunto, were obtained
 “ fairly and without fraud; and unless such certifi-
 “ cate shall, after such oath or affirmation of the
 “ bankrupt, be allowed and confirmed by the Lord
 “ Chancellor, Lord Keeper, or Commissioners for
 “ the custody of the Great Seal of *Great Britain* for
 “ the time being, or by such two of the justices of
 “ the Courts of King’s Bench, Common Pleas, or
 “ Barons of the Court of Exchequer, at *Westmin-*
 “ *ster*, to whom the consideration of such certifi-
 “ cate shall be referred by the Lord Chancellor,
 “ Lord Keeper, or Commissioners of the Great Seal
 “ for the time being; and any of the creditors of such
 “ bankrupt are allowed to be heard, if they shall
 “ think fit, before the respective persons aforesaid,
 “ against the making such certificate, and against
 “ the confirmation thereof; nor shall any commis-
 “ sioner

“ sioner sign such certificate, till after four parts in
“ five in number and value of the said creditors shall
“ have signed the same as aforesaid.”

5 Geo. 2. c. 30. f. 11. “ Every bond, bill, note,
“ contract, agreement, or other security whatsoever,
“ to be made or given by any bankrupt, or by any
“ other person, unto, or to the use of, or in trust
“ for, any creditor, or for the security of the pay-
“ ment of any debt or sum of money due from
“ such bankrupt, at the time of his becoming
“ bankrupt, or any part thereof, between the time
“ of his becoming bankrupt, and such bankrupt’s
“ discharge, as a consideration, or to the intent to
“ persuade him, her, or them, to consent to, or
“ sign any such allowance or certificate, shall be
“ wholly void and of no effect; and the monies
“ thereby secured, or agreed to be paid, shall not
“ be recovered or recoverable, and the party sued
“ on such bond, bill, note, contract, or agreement,
“ shall and may plead the general issue, and give this
“ act, and the special matter in evidence.”

5 Geo. 2. c. 30. f. 12. “ Nothing in this act shall
“ be construed to extend, or give, or grant any pri-
“ vilege, benefit, or advantage, to any bankrupt,
“ who hath, or shall, for, or upon marriage of any of
“ his or her children, have given, advanced, or paid,
“ above the value of one hundred pounds, unless he
“ or she shall prove, or by his or her books fairly
“ kept, or otherwise, upon his or her oath, or,
“ being of the people called Quakers, upon solemn
“ affirmation, before the major part of the commis-
“ sioners, in such commission named and authorized,
“ that he or she had at the time thereof, over and
“ above

Of the Certificate.

"above the value so given, advanced or paid, re-
 "maining in goods, wares, debts, ready money, or
 "other estate, real or personal, sufficient to pay and
 "satisfy unto each and every person to whom he or she
 "was any ways indebted, their full and entire debts,
 "or who hath, or shall have lost, in any one day,
 "the sum or value of five pounds, or, in the whole,
 "the sum or value of one hundred pounds, within
 "the space of twelve months, next preceding his, her,
 "or their becoming bankrupt, in playing at, or with
 "cards, tables, dice, tennis, bowls, billiards, shovel
 "board, or in or by cock-fighting, horse-races,
 "dog-matches, or foot-races, or other pastimes,
 "game or games whatsoever, or in or by having a
 "share or part in the stakes, wagers, or adventures,
 "or in or by betting on the sides or hands of such as
 "do or shall play, act, ride, or run as aforesaid, or
 "that within one year before he or she became bank-
 "rupt, shall have lost the sum of one hundred
 "pounds, by one or more contracts, for the pur-
 "chase, sale, refusal, or delivery of any stock of
 "any company or corporation whatsoever, or any
 "parts or shares of any government or public funds
 "or securities, where every such contract was not
 "to be performed, within one week from the
 "time of the making such contract, or where the
 "stock, or other thing so bought or sold, was not
 "actually transferred or delivered in pursuance of
 "such contract."

5 Geo. 2. c. 30. s. 41. "And whereas commis-
 "sions of bankrupts, and the depositions taken
 "before the commissioners of bankrupts, and the
 "proceedings upon such commissions are most
 "commonly

“ commonly kept by such persons as acts as clerks
 “ or secretaries to such commissions, and by rea-
 “ son of the death of such clerks and secretaries are
 “ many times lost and mislaid, by means whereof
 “ such persons as have or may purchase any messu-
 “ ages, lands, tenements, or hereditaments, under
 “ any commission, grounded upon the statutes made
 “ concerning bankrupts, may be disabled to make
 “ out their right and title to the same: And there
 “ being no certain place where the creditors of any
 “ bankrupt, or any person or persons claiming any
 “ estate or interest in any messuages, lands, tene-
 “ ments or hereditaments, by or under any such
 “ commission as aforesaid, can have recourse to such
 “ commission, and the proceedings thereupon; and
 “ such commissions, depositions and proceedings
 “ in case they can be produced are not at present
 “ of record, nor can be given in evidence, which
 “ may be of very evil consequence to such pur-
 “ chasers, or persons claiming as aforesaid; be it
 “ therefore enacted by the authority aforesaid, that
 “ upon the petition of any person or persons to the
 “ Lord Chancellor, Lord Keeper, or commissioners
 “ for the custody of the Great Seal of *Great Bri-*
 “ *tain*, praying that such commissions, and the de-
 “ positions taken thereon, or any part of such de-
 “ positions, and such certificates so to be allowed
 “ and confirmed as aforesaid, or any certificate heret-
 “ tofore allowed and confirmed, or any other mat-
 “ ters or things relating to the said commissions,
 “ or the proceedings thereupon may be entered of
 “ record, the Lord high Chancellor, Lord Keeper,
 “ or Commissioners of the Great Seal shall and
 “ may

" may direct and order such commissions, deposti-
 " tions, proceedings, and certificates, or other mat-
 " ters or things to be entered of record; and in
 " case of the death of the witnesses proving such
 " bankruptcy, or in case the said commissions, de-
 " positions, proceedings, or other matters or things
 " shall be lost or mislaid, a true copy of the re-
 " cord of such commissions, depositions and pro-
 " ceedings, or other matters or things, signed and
 " attested as herein after is mentioned, shall and
 " may upon all occasions be given in evidence, to
 " prove such commissions, and the bankruptcy of
 " such person against whom such commission hath
 " been or shall be awarded, or other matters or
 " things; any law, usage, or custom to the con-
 " trary notwithstanding. And all certificates which
 " have been allowed and confirmed, or to be allow-
 " ed and confirmed and entered of record as afore-
 " said, or a true copy of every certificate, *signed and*
 " *attested as herein after is mentioned*, shall and may be
 " given in evidence in any of his Majesty's courts
 " of record, and be without any further proof
 " deemed, adjudged and taken to be a full and
 " effectual bar and discharge of and against any ac-
 " tion or suit which shall be commenced or brought
 " by any creditor or creditors of such bankrupt,
 " for any debt or demand contracted, due or de-
 " mandable before the issuing of such commission,
 " unless any creditor or creditors of the person that
 " hath such certificate, shall prove that such cer-
 " tificate was fraudulently obtained; in which
 " case costs shall be allowed to either party as in
 " common cases: And to the end any creditor or
 " other

“ other person or persons may know where to
“ search and see whether such commission hath
“ issued, and find what depositions have been
“ taken by virtue thereof, and what proceedings
“ have been thereupon, and whether the said bank-
“ rupt hath made such affidavit or affirmation as
“ aforesaid, and whether such certificates are
“ entered of record as aforesaid, and all other
“ matters or things which shall be entered of re-
“ cord in pursuance of this act, the Lord high
“ Chancellor, Lord Keeper or Commissioners for the
“ custody of the Great Seal shall appoint a certain
“ proper place near the Inns of court, where all
“ and every the matters aforesaid, shall be entered
“ of record, where all persons shall be at liberty to
“ search and see if the same are duly entered of
“ record; and the Lord Chancellor, Lord Keeper, or
“ Commissioners, shall by a writing under his or their
“ hands, appoint a proper person who shall by him-
“ self or his sufficient deputy, to be approved by
“ the Lord high Chancellor, Lord Keeper or Com-
“ missioners by a writing under his or their hands,
“ enter of record such commissions, depositions,
“ proceedings and certificates, and other matters
“ and things, and have the custody of the entries
“ thereof; and also appoint such fee and reward to be
“ paid to such person for his labour and pains there-
“ in, as the Lord high Chancellor, Lord Keeper, or
“ Commissioners shall think reasonable, not exceed-
“ ing what is usually paid in the like cases; and
“ that the person so to be appointed, and his deputy,
“ shall continue to enter of record, all and every the
“ matters and things aforesaid, and to have the cus-
“ tody

"tody of the same, so long as he or they shall re-
 "spectively behave themselves well in entering the
 "same of record, and keeping such entries, and shall
 "not be removed but by order in writing, under the
 "hand of the Lord high Chancellor, Lord Keeper, or
 "Commissioners, on a good and sufficient cause
 "therein specified; and in case such person shall
 "die, or be as aforesaid removed, the Lord high
 "Chancellor, Lord Keeper, or Commissioners for
 "the time being, shall and may, in writing under
 "his or their hands, appoint another person to en-
 "ter the same of record, who shall have the custody
 "of the entries thereof, and shall have and receive the
 "like fee and reward for his labour and pains
 "therein."

24 Geo. 2. c. 57. s. 10. "And it is hereby
 "enacted, That where any creditor or creditors of
 "any bankrupt reside in foreign parts, the letter of
 "attorney of such creditor, attested by a notary pub-
 "lick in the usual form, shall be a sufficient evidence
 "of the power and authority by which any per-
 "son thereby authorized shall sign any bankrupt
 "certificate; any thing in the said act of the fifth
 "year of his present Majesty's reign, to the con-
 "trary thereof, in any wise notwithstanding."

5 Geo. 2. c. 30. s. 7. "And in case any such
 "bankrupt shall afterwards be arrested, prosecuted or
 "impleaded for any debt due before such time, as
 "he, she, or they became bankrupt, such bankrupt
 "shall be discharged upon common bail, and shall
 "and may plead in general, that the cause of such
 "action or suit did accrue before such time as he,
 "she

" she, or they became bankrupts, and may give this
 " act and the special matter in evidence; and the cer-
 " tificate of such bankrupt's conforming, and the al-
 " lowance thereof according to the directions of this
 " act, shall be, and shall be allowed to be sufficient
 " evidence of the trading, bankruptcy, commission,
 " and other proceedings precedent to the obtaining
 " such certificate, and a verdict shall therefore pass
 " for the defendant, unless the plaintiff in such
 " action can prove the said certificate was obtained
 " unfairly and by fraud; or unless the plaintiff in
 " such action can make appear any concealment
 " by such bankrupt to the value of ten pounds; and
 " if a verdict pass for the defendant, or the plaintiff
 " shall become nonsuited, or judgment be given
 " against the plaintiff, the defendant shall recover
 " his full costs."

5 Geo. 2. c. 30. s. 13. " If any bankrupt who
 " shall have obtained his certificate shall be taken
 " in execution, or detained in prison on account
 " of any debts due or owing before he or she be-
 " came bankrupt, by reason that judgment was ob-
 " tained before such certificate was allowed and con-
 " firmed, it shall and may be lawful for any one or
 " more of the judges of the court, wherein judgment
 " has been so obtained against such bankrupt, on such
 " bankrupt's producing his or her certificate allow-
 " ed and confirmed, to order any sheriff or sheriff's
 " bailiff, or officer, gaoler or keeper of any prison
 " who hath or shall have any such bankrupt in his
 " custody, by virtue of any such execution to dis-
 " charge such bankrupt out of custody on such exe-
 " cution, without payment of any fee or reward."

2 Atk. 82.

In allowing the bankrupt's certificate, the Lord Chancellor must be determined by the acts of parliament; and a *mandamus* will not lie to compel the allowance, for it is discretionary in the commissioners first, and afterwards in the Lord Chancellor, though it ought not to be arbitrary, either in the commissioners or the Chancellor to grant or refuse the certificate, but they ought to be governed entirely by fairness, or fraudulent behaviour in the bankrupt.

As therefore the Chancellor is impowered to exercise a legal discretion in the granting or refusing certificates, he may in the same manner postpone his allowance, whenever the nature of the case appears to require it.

Ex parte
Williamson.
1 Atk. 82.
2 Vesey 249.

Therefore where a trader living in *Ireland* came over to *England*, and had a commission taken out against him, Lord *Hardwicke* postponed his allowance of the certificate, to give an opportunity for *Irish* creditors, if there were any, to send over affidavits and proper authorities to prove debts under the commission.

1 Atk. 83.

But after the allowance of the certificate has been stayed, if sufficient ground for a denial of it is not made out in a reasonable time, the Chancellor will not lock up the certificate for ever, and deprive a man of the liberty the law has given him.

Ex parte Fydele.
1 Atk. 73.

Thus where four parts in five of the petitioner's creditors in *May* 1740, signed the bankrupt's certificate; but *Anthony Dansie* and *Joseph Marson* who had only claimed a debt of 4000 *l.* under the commission, petitioned some time in *December* against the allowance

allowance of the certificate, upon suggestion that the bankrupt by collusion with his son, had conveyed away an estate of 200 *l. per annum* to the son without any consideration. Whereupon his lordship on the 22d. *December* ordered that it should be referred to the commissioners, to inquire into the conveyance made by the bankrupt to *Richard Fydell* his son, and the consideration thereof, and likewise as to the sum of 3863 *l.* mentioned in the affidavits of *Anthony Dansie* and *Joseph Morson*. And the deposition thereof, and the bankrupt's certificate for his discharge under the commission, was by the said order referred back to the said commissioners, who were to certify the whole to the court with all the circumstances relating thereto. Afterwards the bankrupt and his son were severally examined before the commissioners concerning the matters in the order mentioned, and answered the same to the satisfaction of the commissioners, who by their certificate, dated the 15th day of *January*, 1741, certified to the court, that they had reviewed the bankrupt's certificate, and that full four parts in five in number and value had signed.

Mr. *Fydell* the petitioner's son being a member of parliament, the meeting was put off till the middle of *June*, and two days before, *Joseph Morson* died; but at the meeting several other persons came as creditors, who had not appeared till then, and proved debts of 20 *l.* and upwards.

Upon an application to confirm the certificate, it was objected by the representatives of *Morson*, that as he died but two days before the meeting appointed by the Lord Chancellor's former order;

there was no person who had any authority to appear before the commissioners in support of the claim of 4000 *l.* or to litigate the consideration of the bankrupt's conveyance to the son, and that none of *Joseph Morfen's* relations had any personal notice of this meeting, and that as there are several new creditors, who have come in and proved their debts, the certificate already signed is void, as there are not now four parts in five in number and value who have signed.

Lord Hardwicke said that upon looking into the 5 *Geo. 2. c. 30.* he was of opinion, that every thing which is necessary to make it a good certificate had been done, for the commissioners are to certify that the bankrupt has in every thing conformed himself to the several directions required by the several acts of parliament relating to bankruptcy, and are further to certify, that four parts in five of the creditors in number and value, who have duly proved their debts before them under this commission have signed, all which has been done in this case, in the usual form, so that there is no circumstance to distinguish it from the common cases.

He added, that if the new creditors who proved their debts at the last meeting, had joined in the petition to set aside this certificate as fraudulently obtained, and made out their suggestions, it would have been a sufficient ground to set aside the former certificate; but as they have not done it, and have not acquiesced under it, it would be a great hardship upon the bankrupt to delay him any longer.

Where

Where creditors live abroad, and the certificate is signed so soon after the bankruptcy, as not to give them time to come in and prove, it seems a good ground for staying the certificate.

As where a commission of bankruptcy, issued against *William Dobree* on the 6th *April*, 1754, who was declared a bankrupt. The petitioners and several other of his creditors lived in *Guernsey*, and remitted to him several large sums of money, in order to be invested in the funds in *England* in their names.

Ex parte
Saufmeyer.
1 Ark. 84.

After the issuing the commission, they discovered that the bankrupt did not invest the money in the funds in their names, though he wrote them word from time to time that he had so done, and remitted to them the interest as it became due.

The *Guernsey* creditors petitioned to have the allowance of the certificate postponed.

Lord *Hardwicke* said, the most important of the bankrupt's transactions, and the largest of his debts are in *Guernsey*, which though part of the dominions of the crown of *Great Britain*, are at a great distance from hence; and yet notwithstanding the commission was taken out in *April* only, the certificate was signed on the 18th *May* after. Such precipitation in a matter of this kind is very improper. Suppose these creditors in *Guernsey* had heard of this bankruptcy, still they could not come in as creditors, till they had first directed a search in the books of the respective companies, to see in what manner the stock was purchased, whether in their own names, or the bankrupt's. The admitting such a certificate as this, would be turning the

edge of the law against creditors in favour of bankrupts, which is not to be suffered in a commercial country." Therefore his lordship stayed the allowance of the certificate.

Anonymous.
1 Atk. 84.

And in another case, where the commission was taken out on the 10th September, and the certificate signed the 30th November following. Lord Hardwicke said, he disapproved extremely of commissioners being so precipitate in signing certificates, such hasty proceedings invert the very intention of the acts of parliaments, which were made in favour of creditors, but are too often abused for the service of insolvent persons.

Ex parte
Johnson.
1 Atk. 81.

But where four parts in five in number and value of the creditors have signed the certificate, the Chancellor will not stay the certificate, on the application of creditors whose demands are not liquidated, but depend on an account to be taken, especially if the creditor does not swear to a balance in his favour. For unless a person proves a debt, or shews a reasonable ground for a claim, he is not within the rule for assenting or dissenting to the certificate.

1 Atk. 83.

Cowp. 25.
Stra. 868. 1043.
1160.
1 Atk. 119.
129.
3 Will. 13.
262.
Ante 141.

A certificate does not discharge a bankrupt from a contingent debt which has not been reduced to a certainty, because they can not be proved under the commission, and in questions whether a debt is discharged or not by a certificate; the point agitated has always been, whether it could be proved or not, the creditor's right to prove, and the bankrupt's right to be discharged by the certificate being reciprocal and co-extensive.

A certificate discharges a bankrupt from a debt accruing before the commission, though judgment is not obtained till after the certificate allowed.

For where a bankrupt had given a bail-bond to the sheriff, which was forfeited before the bankruptcy for non-appearance, and an action brought upon this bail-bond, but judgment not obtained till after the certificate allowed. The court held there was a breach, and the penalty forfeited, therefore the debt was due, though execution could not be taken out for more than the damages.

*Boutflower v.
Coats.
Cowp. 25.*

The allowing the certificate of a bankrupt will not discharge the sureties, and if they are forced to pay the debt after the commission of bankruptcy, the certificate will be no bar to their recovering it of the principal.

1 Atk. 84.

Thus where *Mills* and *Magnall* were partners with one *Bailey*; and in order to raise money the partnership had entered into bonds. In the year 1765, *Bailey* withdrew from the partnership, and wishing to be discharged from these bonds, application was made to *Taylor* to become surety instead of *Bailey*, to which he consented. The bonds became due, and afterwards *Mills* and *Magnall* became bankrupts. When the obligees had got as much as they could from the partnership estate, and which amounted to no more than 6 s. in the pound, they came upon the plaintiff for the residue. He accordingly paid it, and brought his action for money paid, laid out, and expended.

*Taylor v. Mills.
Cowp. 525.*

Lord *Mansfield* held, that the action would lie. He said, this case was not harder than any other case

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of

of a debt arising after bankruptcy upon a pre-existing ground. At the time of the bankruptcy, the defendants were not indebted to *Taylor*; he clearly, therefore, could not come in as a creditor under the commission. He was not damnified at that time; and till damnified (which he could not be till he had been called upon and had paid) he could not bring an action. He did not pay till after the commission issued; consequently his whole damage and cause of action arose after the bankruptcy, and therefore could not be discharged by the certificate. With respect to the money received by the original creditors under the commission, it is a discharge of so much of the debt; and the surety is only liable for the remainder; consequently he can recover no more against the defendants. But as to *that*, he is a new creditor, and is not barred by the certificate. It is an extremely clear case, and not different from any, where the cause of action, though it arises after the bankruptcy, is founded on a pre-existing ground.

*Young v.
Hockley.*
2 Black. 840.

So where the bankrupt, on the 25th *June*, 1769, drew a bill of exchange on *Young* for 57*l.* 5*s.* 4*d.* payable one month after date, to his own order, which *Young* on the same day accepted. On the 12th *July*, a commission of bankruptcy was issued. The bill became due the 28th of *July*, when *Young* paid it. The bankrupt obtained his certificate on the 5th *September*, 1769, which was allowed on the 23d of *October*. The court were of opinion, that the certificate was no bar to an action brought by *Young*, and that the point was now entirely settled.

3 Ark. 84.

The allowing the certificate of a bankrupt, will not discharge his sureties; but if a bankrupt obtains

his

his certificate before his bail are fixed, it will discharge them; but if not till after they are fixed; they will remain liable notwithstanding the certificate, for it has no relation back; and till allowed it is nothing. And if the creditor proves his debt, with intent, to obstruct the certificate, it does not preclude him from pursuing his legal remedies; and even if he had received his debt, or part of it, under the commission, still he might proceed to fix the bail, who would be intitled to their remedy, so far as they are oppressed, by *audita querela*, or by motion.

However, the bankrupt's certificate, obtained after judgment in an action upon a bail bond against the bankrupt himself, will not discharge the bail bond, although it discharged the original debt; for it is a new and distinct cause of action.

The certificate does not discharge a bankrupt from his own express collateral covenant, which does not run with the land. Thus, where there was a covenant by the bankrupt, to indemnify the assignor against covenants contained in a lease, which lease was assigned to the bankrupt before his bankruptcy, for his sole benefit; the question was, whether the bankrupt's obtaining his certificate would bar this action of covenant?

The court were clearly of opinion, that as this was not a case between lessor and lessee, but a distinct, detached, collateral, independant covenant and contract, and the assignor could have no remedy under the commission, the bankrupt was not discharged by his certificate.

But in an action of debt for rent, the certificate will be a bar, because the assignment of the lease by the commissioners is considered as an assignment by the
assent

Wooley v.
Cobbe.
1 Burr. 244.

Tudway v.
Brown.
2 Burr. 716.
Walker v.
Giblett.
2 Black. 822.

Cockeril v.
Ouston.
1 Burr. 436.
Graham v.
Benton.
2 Stra. 1196.
1 Will. 41.

Mayor v.
Steward.
4 Burr. 2443.

assent of the lessor, all persons being supposed to consent to an act of parliament, by the authority of which the commissioners assign the bankrupt's property; and therefore as the bankrupt is no longer in the enjoyment of the thing demised, debt does not lay for the rent.

*Castrel v.
Graham.
2 Barnet 61.*

For in action brought upon a lease, dated in 1727, for two years rent due since the year 1733, when the defendant became a bankrupt, the defendant moved for a common appearance, and produced his certificate, allowed, confirmed, and inrolled. Upon hearing counsel on both sides, neither the possession, nor the legal interest of the estate being in the defendant, a common appearance was ordered to be accepted.

*Wadham v.
Marlow.
Mich. 25 G. 2.
R. R.*

So in an action of debt for rent reserved on the *reddendum* of a lease. The defendant pleaded as to part, that it became due since the bankruptcy, and that he had obtained his certificate. To this plea there was a demurrer.

Lord *Mansfield* said, that the effect of the commissioners assignment to the assignees, was the true point in debate in the cause. That the estate of a bankrupt is transferred by the statute of bankruptcy. Every man virtually agrees to an act of parliament, and as the lease is assigned by act of parliament, it must be considered as an assent of the lessor. Though it is true that the commission is founded on an act of bankruptcy committed by the lessee, yet the statutes are the immediate cause of transferring the property to the assignees, and therefore in *jure, causa proxima, non remota, spectatur*. Judgment was pronounced against the demurrer.

A bank-

A bankrupt was taken up upon an attachment, for not performing an award; after which he became a bankrupt, and obtained his certificate, and moved to be discharged.

The court said, this was a demand for which debt would lye; and the act says, he shall not be arrested, prosecuted, or impleaded, for any debt due before the bankruptcy. It would therefore be hard to keep him in custody, when the duty is discharged; and therefore in this case he must be discharged.

Baker's Case.
2 Stra. 1152.

The bankrupt laws being now adopted in *Ireland*, if a trader there becomes a bankrupt, and obtains his certificate, it will operate as a discharge in an action brought here upon a debt arising in *Ireland*.

Thus, on a motion to enter an *exoneretur* on the bail piece, it appeared, that the defendant had been a bankrupt, and obtained a certificate under the Great Seal of *Ireland*.

Ballantine v.
Golding.
Mich. 24 G. 3.
B. R.

The original demand arose upon a bill of exchange drawn in *Ireland*, and payable by the defendant who resided there.

Lord Mansfield said, It is a general principle, that where there is a discharge by the law of one country, it will be a discharge in another. That he remembered a case in Chancery of a *cessio bonorum* in *Holland*, which is held a discharge in that country, and it had the same effect here.

The rule was enlarged, and was afterwards made absolute by consent, the counsel giving it up upon the authority of *Burrows v. Femino*.

2 Stra. 733.

But a certificate under a commission in *England*, will not bar a debt contracted in the *West Indies*; for Lord Talbot held, notwithstanding the effects of a bankrupt

Bea. Lex. Merc.
499.

bankrupt in the Plantations are liable to a commission here, and the right is vested in the assignees, and though it seemed reasonable, that his certificate should be equally extensive, yet as the laws of *England*, made since *Barbadoes* and the other plantations were settled, did not extend to them, unless they were expressly named; and as the laws relating to certificates did not expressly extend to the Plantations, he was of opinion, a certificate confirmed here, would be no discharge to the bankrupt, if a suit was commenced against him in *Barbadoes*, or the other plantations.

The summary application to the court, by way of motion, is an application to the equitable jurisdiction of the court. Formerly the method was for the bail to surrender the defendant, and then for him to apply to be discharged upon an affidavit, stating the fact of his having become a bankrupt since the cause of action arose, and obtained a certificate; but of late, where a bankrupt is clearly intitled to his discharge, the court, to avoid circuitry, have ordered an *exoneretur* to be entered on the bail piece, without the form of a regular surrender of the bankrupt by his bail. But the bail can never be in a better situation than the principal; therefore where it appears that the bankrupt himself would not be intitled to be discharged, a motion on the part of the bail to enter an *exoneretur* on the bail piece, will of course be refused.

Martin v.
O'Hara. Cowp.
323.

As where the bankrupt in *July 1775*, carried on the trade of a linen draper, and lived in *London*. In *March 1776*. he became bankrupt, and was refused his certificate, before which bankruptcy the
cause

cause of action arose. He then went to *Bristol*, where he entered into partnership with one *James Wright*, a dealer in cheese; and half a year after, became bankrupt again. Under this second commission, which was taken out at *Bristol*, and which the creditors in *London* knew nothing of, he obtained his certificate.

The court held that a second commission could not be taken out against an uncertificated bankrupt, and therefore he was not intitled to be discharged by the certificate he had gained under it, and denied the motion which had been made to enter an *exoneratur* on the bail-piece.

And in an application to this equitable jurisdiction of the court, if there is any appearance of fraud, the court will not interfere.

Thus, upon a motion to discharge the defendant on common bail, he having been a bankrupt, and obtained his certificate, cause was shewn that the debt was on a bill of exchange for 60*l.* that the defendant lived in *Russel-street Bloomsbury*; that the commission of bankrupt described him as of the parish of *St. Faith, the Virgin, in London*, where he never lived; and that the plaintiff never heard of the commission till after he had sued out the writ.

Sowley v. Jones,
2 Black. 725.

On these circumstances, the court left the defendant to take what advantage he could of this bankruptcy, at the trial, and discharged the rule with costs.

A bankrupt after a commission of bankruptcy sued out, may in consideration of a debt due before the

1 Atk. 67.

the bankruptcy, and for which the creditor agrees to accept no dividend or benefit, under the commission, make such creditor a satisfaction, in part, or for the whole of his debt, by a new undertaking, or agreement; and *assumpsit* will lye upon such new promise or undertaking. For a bankrupt may undoubtedly contract new debts, therefore, if there is any objection to his recovering an old debt, by a new promise, it must be founded on the ground of its being *nudum pactum*. But all the debts of a bankrupt are due in conscience, notwithstanding, he has obtained his certificate.

Freeman v.
Fenton. Cowp.
544.

Thus in an action on a promissory note bearing date the 11th day of February 1775, payable to one Joseph Freeman, three months after date, for 67*l.* and indorsed by him to the plaintiff. On the 15th December 1774. the defendant Fenton, purchased a quantity of linen, of the plaintiff Freeman, for which he drew two notes on the defendant for 67*l.* 9*s.* each payable to his own order, at six weeks and two months respectively. The defendant on the 19th January, became bankrupt. The plaintiff did not prove under the commission, and the defendant voluntarily proposed to secure to him the payment of 67*l.* in satisfaction of his debt, if he would take up the two notes, and cancel, and deliver them up to the defendant. The plaintiff agreed to this proposal, and took up the two notes, delivered them to the defendant, to be cancelled, and accepted the note for 67*l.* in satisfaction, and discharge thereof. Upon a question whether the plaintiff was intitled to recover, the defendant having obtained his certificate under the commission.

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The court said, there was in this case no fraud, no oppression, no scheme whatsoever, on the part of the plaintiff to deceive or impose on the defendant; and that the bankrupt might revive the old debt; it is true, a bankrupt may be, and is held to be discharged by his certificate from all debts due at the time of the commission, but still he may make himself liable on a new promise; if he could not, the provision in the *Stat. 5 Geo. 2. c. 30. s. 11.* by which every security for the payment of any debt due before the party became bankrupt, as a consideration to a creditor to sign his certificate, is made void, would be totally nugatory.

Bailey v. Dillon
2 Burr. 736.
Lewis v. Chase,
1 P. W. 620.

In an action upon a bond, it was stated that interest had been paid on the bond after the defendant had obtained his certificate, but it did not appear whether such interest was paid by the bankrupt, or one of the sureties. Lord *Manifield* said, that if the interest was not paid by the bankrupt, there was no question; but that, if it was, it would be an admission by him, that the principal was then due, and he might be liable, as on a new contract.

Allop v. Brown.
Doug. 182.

If some of a bankrupt's creditors are induced by money to sign his certificate, though he does not know of it at the time of the signing, nor even when he makes the necessary affidavit in order to obtain the allowance of the certificate by the Chancellor, yet if he knows it before the actual allowance, the certificate is void, for though a third person shall not be punished for the fraud of another, he shall not avail himself of it. There is no way of compelling the creditors to sign the certificate. They are all left at liberty,

Robson v. Calne.
Doug. 216.

and

and ought to be upon a par; and if some are induced to sign it because others have, who they suppose to be upon a par with themselves, but who in fact have been paid, this is a gross fraud upon them. But if money is given by an enemy of the bankrupt's, in order to deprive the bankrupt of the effect of his certificate, where there are creditors sufficient in number and value, without those who are paid to sign it, the bankrupt shall not be hurt by this fraud upon him; but if the necessary number and value is completed by persons who are induced to sign by money, that, though without the privity of the bankrupt is a fraud on the creditors at large, and shall not have the intended effect.

A certificate is a bar against all creditors, whether they have signed or not, but they shall not be deprived of their remedy against the bankrupt unless it is obtained agreeably to the directions of the statute. And this is not to be considered as a hardship on the bankrupts, for the certificate would not have existed, if it had not been obtained by means which the legislature has reprobated.

As it is iniquitous and illegal for a defendant to take, so it is for him to detain money paid to him even by the bankrupt's friend for signing the certificate. If a man make use of what is in his own power, to extort money from one in distress, it is certainly illegal and oppressive, and whether it is the bankrupt or his friend, who paid the money, it is the same thing. The taking money for signing certificates, is either an oppression on the bankrupt or his family, or a fraud on his other creditors. It was a thing wrong in itself before.

before any provision was made against it by statute; for if the bankrupt has conformed to all the law requires of him, and has fairly given up his all, the creditor ought in justice to sign his certificate; but on the other hand, if the bankrupt has been guilty of any fraud or concealment, the creditor ought not to sign, for any consideration whatever. If any near relation is induced to pay the money for the bankrupt, it is taking an unfair advantage, and torturing the compassion of his family. If it is the money of the bankrupt himself, it is giving one creditor his debt, to the exclusion of the others, and a fraud upon them.

Therefore an action will lie to recover back money paid to a creditor, to sign the bankrupt's certificate.

As where the bankrupt's sister paid to a creditor 40*l.* to induce him to sign the certificate, which he did; and she afterwards brought an action to recover the money. The defendant's counsel cited the case of *Lewis v. Chase*, where the plaintiff, being a bankrupt, endeavoured to be discharged, with the consent of four fifths of his creditors in number and value. The defendant, a creditor preferred his petition to the Lord Chancellor, against the allowance of the certificate; upon which the bankrupt, in consideration of his withdrawing his petition, gave him a bond for his whole debt. Afterwards, the bankrupt's certificate was allowed, and the defendant putting the bond in suit against the bankrupt, he pleaded the act of parliament, and that the bond was obtained in order to procure

Smith v.
Bromley.
Doug. 670.

2 P. W. 620.

his discharge, and on a verdict for the plaintiff, the bankrupt brought a bill, insisting that the bond was obtained from him, under his necessities, and within the reason of that clause in the 5 Geo. 2. which makes bonds void for consenting to the bankrupt's discharge.

The court said, here is an honest creditor, and the bankrupt, if he pays him all, still pays but what in conscience he ought. He that comes into equity, to avoid the payment of a just debt, ought to come with a very clear case, if he hopes to succeed. The defendant could not be said to do amiss, in petitioning the Great Seal against the allowance of the certificate; neither can it now appear what success that petition would have been attended with. It may be, he had just cause to petition, and the bankrupt no right to have the petition disallowed; and the plaintiff, if he had a fair defence, ought to have made use of it against the petition, but in case of treating to withdraw it, the other might insist upon reasonable terms to have his just debt.

But Lord Mansfield determined the action to be well-brought. He said, as to the case cited from *Pierre Williams*, that only affected the person who petitioned. There might have been sufficient of the creditors, in number and value, to sign, without him, and he had a right to compromise it upon what terms he pleased. The petitioning or not, was intirely in his own power, and not like the present case.

His Lordship added, that the plaintiff, the sister of the bankrupt, did not apply to the defendant,

dant, or his agent, to sign the certificate on an improper or illegal consideration, but, as the defendant insisted upon it, she, in compassion to her brother, paid what he required.

If the act is in itself immoral, or a violation of the general laws of public policy, there the party paying shall not have this action; for where both parties are equally criminal against such general laws, the rule is, *potior est conditio defendentis*. But there are other laws, which are calculated for the protection of the subject against oppression, extortion, deceit, &c. If such laws are violated, and the defendant takes advantage of the plaintiff's condition or situation, there the plaintiff shall recover.

The jury under his lordship's direction found a verdict for the plaintiff.

So where an agreement was made to pay a sum of money to the assignees, for the benefit of all the creditors, if they would sign the certificate, it was notwithstanding held to be within the letter and the reason of the statute, for great corruption and oppression might arise from a combination of all the creditors, to exact conditions for signing the certificate.

A certificate under a second commission will not protect future effects, unless fifteen shillings in the pound are paid under the second commission, notwithstanding the first has been superseded.

On a general plea of bankruptcy under 5 Geo. 2. c. 30. The plaintiff may give the condition of the bond on which the action is brought in evidence, to shew that he is not barred by the certificate;

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for

Jones v.
Berkley.

Dougl. 673.

Thornton v.
Dallas.

Dougl. 46.

Alfop v. Price.
Dougl. 160.

Of the Certificate.

Willen v.
Geordini.
Tria. 1782.
B. R.

for the plea given by the statute, opens the whole merits of the question in evidence on both sides.

As in an action upon a promissory note, the defendant pleaded his certificate, and that the cause of action arose before he became bankrupt. To this plea there was a special demurrer, shewing for cause, that the defendant ought to have shewn in his plea, that he had conformed according to the bankrupt acts.

2 Will. 139.

Goodtitle v.
North
Doug. 562.

The court said, it is not necessary, because the statute has directed this general pleading, and if the defendant has not conformed, it is matter of evidence. And they denied the case of *Paris v. Salkeld* to be law.

Bankruptcy is no plea in bar to an action of *trespass* for *mesne profits*; for where damages are uncertain, they cannot be proved under a commission of bankruptcy.

Howard v.
Jemmet
3 Black. 400.

A bankrupt executor pleading a false plea, after the commission issued, is liable to execution for the costs, for he becomes a debtor by his false plea, which amounts to contracting a new debt subsequent to the commission.

Ex parte
Sausmerez.
1 Atk. 36.

The clause in the 5 Geo. 2. in which a bankrupt is excepted from the benefit of his certificate, who hath, upon the marriage of any of his children, given above the value of 100 l. unless he hath sufficient to satisfy all his creditors, is a penal clause, and therefore must be construed strictly, and confined to the children of a bankrupt, and not extended any further. Therefore a bankrupt who had given 1000 l. portion with his niece, was held by Lord *Hardwick*, not to be within the act.

On

Of the Certificate.

357

On a petition on behalf of a bankrupt to be discharged from a commitment under an extent of the crown, having surrendered himself to the commissioners, and conformed himself according to the acts of parliament relating to bankrupts.

The Lord Chancellor said, the crown is not within the statutes of bankrupts, and therefore he cannot be discharged from a commitment on behalf of the crown.

Creditors who are proceeding against the bankrupt in law, may prove their debt for the purpose of assenting or dissenting to the certificate, where there is a joint and separate commission, a creditor under the joint commission, may come under the separate, and assent or dissent to the certificate of the bankrupt under the separate commission, because his debts will be barred by the certificate.

An executor may sign a bankrupt's certificate, but a person who has a debt in his own right, and another debt as executor, cannot sign a certificate in two distinct rights, for both are to be considered as his own particular debt.

A bankrupt's certificate signed by the creditors in his life-time may be confirmed by the Lord Chancellor, after his death, and will be as good and valid as if confirmed in the bankrupt's life-time; for notwithstanding the statute mentions only the bankrupt, yet it extends to his representatives.

Upon a petition preferred by creditors praying for the removal of a sole assignee, and that the Lord Chancellor would not confirm the commissioners certificate of the bankrupt's conformity; it appear-

Anonymous.
1 Atk. 262.

Ex parte Turner.
1 Atk. 97.

1 Atk. 67.
2 Stra. 1157.
3 P. W. 24.

Ex parte
Sausmerez.
1 Atk. 85.

Bromley v.
Goodere.
1 Atk. 77.

Green. 260.

Of the Certificate.

ed that the clerk to the commission was the petitioning creditor; and sued it out, and that the present assignee's father, being the principal creditor under the commission, had chosen himself sole assignee; and that he had since died intestate, leaving his said son the bankrupt, his only heir at law, whereby he became his sole personal representative, and thereby as he insisted, the principal creditor under his own commission, and as such, he had signed the commissioners' certificate of his own conformity, and also chosen himself sole assignee under the commission, taken out against himself.

The Lord Chancellor declared, that every rule, every maxim, and every principle of law, concurred in recognising the claim in question. It is well known (said his Lordship) that by the law of England, the act of God, or of the law, can do no man any injury or wrong: but in case I was not to dismiss this petition, the act of God as well as of the law, would do the person against whom it is preferred an irreparable injury; for as the original creditor died intestate, leaving the bankrupt his only son, and consequently universal heir, if I was to be of opinion his representative had no legal right, the person of the present bankrupt could never be released; as no other creditor is qualified to sign the certificate for him, nor can any person be legally qualified for that purpose, during the life of the bankrupt. There is no suggestion of any fraud, for as to the allegation in the petition, that the clerk to the commission, and the father and son combined together, in order to defraud the creditors of the son, for that the debt of the petitioning creditor

tor was collusive, and contracted on purpose to support a friendly commission; as this allegation is not so much as even attempted to be made out by any sort of evidence, it must be totally disregarded, and I cannot presume fraud in any case, especially in such an one as the present appears to the court; and indeed was there such collusion as suggested, the deceased has made the bankrupt's creditors ample amends, by enabling him, perhaps, to pay every one of them 20 s. in the pound, though it may be against his intention. And his Lordship accordingly dismissed the petition.

Though a creditor of a bankrupt under 20 l. is, ^{7 Vin. 134. pl. 184} excluded from assenting or dissenting to the certificate, &c. yet as he is affected by the consequence of allowing it, he hath a right to petition, and shew any fraud against allowing it.

time the creditors who have not before proved their debts, shall then be at liberty to prove the same; which respecting for the City of London, and all places within the bills of mortality, shall be at the disposal of the said city, and upon every such meeting, the assent or dissent shall prove due to the said commissioners and creditors, and perfect, but shall not account of all this and their estate and effects, and of what shall remain out standing, and the bankrupt's interest, and shall if the creditors shall want of the major part of them, require the same to be examined upon oath, or being of the people called Quakers, upon solemn affirmation, that the said commission-
 A 24 CHAP.

C H A P. XVIII.

Of the Dividend and the Bankrupt's Allowance.

Y 3 Geo. 2. c. 30. s. 38. "Every person or
 "Persons chosen, or who shall be chosen assignee or assignees of the estate and effects of such bankrupt, shall, at some time after the expiration of four months, and within twelve months from the time of issuing of such commission, cause at least twenty-one days public notice to be given in the *London Gazette*, of the time and place the commissioners and assignees intend to meet, to make a dividend or distribution of such bankrupt's estate and effects; at which time the creditors who have not before proved their debts, shall then be at liberty to prove the same; which meeting for the city of *London*, and all places within the bills of mortality, shall be at the *Guildhall* of the said city; and upon every such meeting, the assignee or assignees shall produce to the said commissioners and creditors then present, fair and just accounts of all his and their receipts and payments, touching the said bankrupt's estate and effects, and of what shall remain out-standing, and the particulars thereof; and shall, if the creditors then present, or the major part of them, require the same to be examined upon oath, or, being of the people called Quakers, upon solemn affirmation before the said commissioners, or the major-part of them, touching the truth
 " of

" of such accounts, and in such accounts the said
 " assignee or assignees shall be allowed, and retain
 " all such sum and sums of money as they shall have
 " paid and expended in suing out and prosecuting of
 " such commission, and all other just allowances on
 " account of, and by reason or means of their being
 " assignee or assignees; and the said commissioners
 " on the major part of them, shall order such part
 " of the neat produce of the said bankrupt's estate,
 " as by such accounts or otherwise, shall appear to
 " be in the hands of the said assignees, as they on the
 " major part of them shall think fit, to be forth-
 " with divided amongst such of the bankrupt's cred-
 " itors, who have duly proved their debts under such
 " commission, in proportion to their several and
 " respective debts; and the commissioners, on the
 " major part of them, shall make such their order
 " for a dividend in writing under their hands, and
 " shall cause one part of such order to be filed
 " amongst the proceedings under the said commis-
 " sion, and shall deliver unto each of the assignee or
 " assignees under such commission, a duplicate of
 " such their order, likewise under the hands of
 " the said commissioners; which order of distribu-
 " tion shall contain an account of the time and
 " place of making such order, and the sum total,
 " or *quantum* of all the debts proved under the said
 " commission, and the sum total of the money re-
 " maining in the hands of the assignee or assignees
 " to be divided, and how much in particular in the
 " pound is then ordered to be paid to every credi-
 " tor under the said commission; and the said as-
 " signee or assignees in pursuance of such order,
 " and

Of the Dividend, &c.

“and without any deed or deeds of distribution to
“be made for that purpose shall forthwith make
“such dividend and distribution accordingly, and
“shall take receipts in a book to be kept for that
“purpose from each creditor, for the part or share
“of such dividend or distribution which he or they
“shall make and pay to each creditor respectively;
“and such order and receipt shall be a full and ef-
“fectual discharge to such assignee, for so much as
“he shall fairly pay, pursuant to such order as afore-
“said.”

§ Geo. 2. c. 30. s. 37. “Within eighteen months
“next after the issuing of any such commission as
“aforesaid, the assignee or assignees shall make a second
“dividend of the bankrupt’s estate and effects, in
“case the same was not wholly divided upon the
“first dividend, and shall cause a notice to be in-
“serted in the *London Gazette*, of the time and place
“the said commissioners intend to meet, to make a
“a second dividend and distribution of such bank-
“rupt’s estate or effects, and for the creditors who
“shall not before have proved their debts, to come
“and prove the same; and at such meeting every
“such assignee or assignees shall produce upon oath
“or affirmation as aforesaid, his, her, or their ac-
“count or accounts of the bankrupt’s estate and
“effects, and what upon the balance thereof shall
“appear to be in his, her, or their hands, shall, by
“the like order of the commissioners, or the major
“part of them, be forthwith divided amongst such of
“the bankrupt’s creditors who shall have made due
“proof of their debts, in proportion to their several
“and respective debts; which second dividend shall

" be final, unless any suit at law or in equity shall be
 " depending, or any part of the estate standing out,
 " that cannot have been disposed of, or that the
 " major part of the creditors, shall not have agreed
 " to be sold and disposed of in manner aforesaid, or
 " unless some other or future estate or effects of
 " the said bankrupt, shall afterwards come to or
 " vest in the said assignee or assignees; in which
 " case the said assignee or assignees shall, as soon as
 " may be, convert such future or other estate and
 " effects into money, in manner aforesaid, and shall,
 " within two months next after the same shall be
 " converted into money as aforesaid, by the like
 " order of the commissioners, or the major part of
 " them, divide the same among such bankrupt's cre-
 " ditors who shall have made due proof of their
 " debt under such commission."

5 Geo. 2. c. 30. s. 7. " All and every person and
 " persons so become or to become bankrupts as
 " aforesaid, who shall, within the time limited by
 " this act, surrender him, her, or themselves, to the
 " acting commissioners named and authorized in or
 " by any commission of bankrupt, awarded or to be
 " awarded against him, her or them, and in all things
 " conform as in and by this act is directed, shall be
 " allowed the sum of five pounds *per centum* out of
 " the neat produce of all the estate that shall be re-
 " covered in and received, which shall be paid unto
 " him, her, or them, by the assignee or assignees of
 " the said commissioners, in case the neat produce of
 " the said estate, after such allowance made, shall
 " be sufficient to pay the creditors of the said bank-
 " rupt, who have proved their debts under the said

" com-

commission, the sum of ten shillings in the pound,
 and so as the said five pounds *per centum* shall not
 amount in the whole to above the sum of two
 hundred pounds. And in case the neat produce of
 the said estate shall, over and above the allowance
 hereafter mentioned, be sufficient to pay the said
 creditors the sum of twelve shillings and six pence
 in the pound for their respective debts; that then
 all and every person or persons so conforming,
 shall be allowed the sum of seven pounds ten shil-
 lings *per centum*, out of such neat produce, to be
 paid by such assignee or assignees, so as such seven
 pounds ten shillings *per centum* shall not amount
 in the whole to above the sum of two hundred
 and fifty pounds. And in case the neat produce
 of the said estate shall, over and above the allow-
 ance hereafter made, be sufficient to pay the said
 creditors the sum of fifteen shillings in the pound
 for their respective debts, that then all and every
 such person and persons so conforming, shall be
 allowed the sum of ten pounds *per centum*, out of
 such neat produce, to be paid by the assignee or
 assignees, so as such ten pounds *per centum* shall
 not amount in the whole to above the sum of three
 hundred pounds; and every such bankrupt shall
 be discharged from all debts by him, her, or
 them, due or owing at the time that he, she, or
 they did become bankrupt.

5 Geo. 2. c. 30. s. 9. "From and after the twen-
 ty-fourth day of June, one thousand seven hundred
 and thirty-two, in case any commission of bank-
 ruptcy shall issue against any person or persons, who
 after the said twenty-fourth day of June, one
 thousand

" thousand seven hundred and thirty-two, shall have
 " been discharged by virtue of this act, or shall have
 " compounded with his, her, or their creditors, or
 " delivered to them, his, her, or their estate or ef-
 " fects, and been released by them, or been dis-
 " charged by any act for the relief of insolvent debt-
 " ors, after the time aforesaid; that then, and in
 " either of those cases, the body and bodies only of
 " such person and persons conforming as aforesaid,
 " shall be free from arrest and imprisonment by vir-
 " tue of this act; but the future estate and effects
 " of every such person and persons shall remain li-
 " able to his, her, or their creditors, as before the
 " making of this act (the tools of trade, the neces-
 " sary household goods and furniture, and the neces-
 " sary wearing apparel of such bankrupt and his
 " wife and children only excepted) unless the estate of
 " such person or persons against whom such commis-
 " sion shall be awarded, shall produce clear, after
 " all charges, sufficient to pay every creditor under
 " the said commission, fifteen shillings in the pound
 " for their respective debts."

" 1 Jac. 1, c. 15. s. 15 " Such of the commissioners
 " as shall put the said commission in execution, shall,
 " upon lawful request to them made by the said
 " bankrupt, not only make a true declaration to
 " the said bankrupt, of the employing and bestowing
 " of his, her, or their lands, tenements and heredi-
 " taments, offices, fees, goods, wares, money,
 " chattels and debts, which shall be paid and satisfied
 " to their said creditors, as in the like case limited
 " or appointed by the 13 Eliz. but also make pay-
 " ment of the overplus of the same, if any such
 " shall

“shall be to the said bankrupts, their executors, administrators, and assigns. And the said bankrupts, after full satisfaction of the said creditors, shall have full power and authority to recover and receive the residue and remainder of the debts to them owing.”

Cooper v.
Pepys.
1 Atk. 107.

Ex parte
Whitchurch.
1 Atk. 91.

Brown v.
Bullen.
Doug. 392.
Ante.

1 Atk. 208.

The act of parliament allows the assignees a complete four months from the issuing of the commission, to make a dividend; therefore the Lord Chancellor will not interfere respecting the dividend within that time. But if the assignees, after the four months are elapsed, refuse to make a dividend, the Chancellor will, upon petition, order them to attend the commissioners, at a meeting appointed for that purpose; and that if the commissioners think it proper for the assignees to make a dividend, that it shall be advertised accordingly; or the commissioners may themselves appoint a meeting for such purpose, without an order of the court.

Assumpsit will lie for a creditor's share under an order of commissioners of bankrupt for a dividend; and in such action, the proceedings before the commissioners are conclusive evidence of the debt; for after a debt is liquidated before the commissioners, it cannot be litigated but by an application to the Great Seal.

If creditors have not been able to prove their debts in time to receive a dividend, they will still be admitted upon the terms of not disturbing any former dividend, and upon obtaining an order for that purpose they must, in the first place, be brought up equal to the creditors under the former dividends, before

before the commissioners can proceed to make another.

Though a bankrupt does surrender and conform, yet he is not intitled to the allowance given to bankrupts, unless he has had his certificate; for if the creditors should consent to give it him before, it would be of no service, as they might take it from him again the next moment; for it would be liable, in his hands, to satisfy any creditor, till he is intirely cleared by the certificate.

Ex parte Grieg
1 Atk. 208.

Bankrupts are not intitled to their allowance, till a final dividend is made, because it cannot be seen before, whether they will be intitled to any allowance at all; for the act of parliament directs, that the neat produce of his estate shall be sufficient to pay the creditors of the bankrupt who have proved their debts under the commission, the sum of ten shillings in the pound, after such allowance made.

Therefore where the petitioners, by their petition, set forth, that they had paid a dividend of ten shillings in the pound, clear of all expences under a joint commission, and prayed their allowance.

Ex parte Stiles
and Pickart.
1 Atk. 208.

Lord Hardwicke said, the application was premature, the commission having issued only in June, and this application in February, and no final dividend made, before which any creditor may come to prove debts.

The bankrupt's allowance is an interest vested in him, and consequently transmissible to his representative.

1 Atk. 208,
109.
3 Atk. 314.

Accordingly, upon a petition setting forth, that the petitioner is the representative of a bankrupt, whose

Ex parte Trap.
1 Atk. 208.

whose estate had paid a neat ten shillings in the pound to his creditors under the commission, and thereby became intitled to an allowance of five per cent. provided the five per cent. did not in the whole amount to above the sum of 200*l*. The commissioners directed the assignees to pay the bankrupt the sum of 163*l*. his estate amounting to 1000*l*. but before the assignees had paid it, the bankrupt dies, which was the reason they did not think fit to pay it to the representatives of the bankrupt, without the sanction of the court.

Lord Hardwicke was of opinion, that it vested in the bankrupt, and that his representative was intitled.

If the bankrupt's estate is more than sufficient to pay twenty shillings in the pound, he is intitled to the surplus; but all creditors by bonds, contracts, or notes carrying interest, are intitled to receive interest out of his estate for the principal sum owing at the time of the commission, before any surplus shall be conveyed to the bankrupt or his representative.

Bromly v.
Goodere.
1 Atk. 30.

C H A P. XIX.

Of the Supersedeas.

THE *supersedeas* is a writ issuing under the Great Seal, to supersede the commission, and this writ may be issued at the discretion of the Lord Chancellor, when the creditors of the bankrupt agree to supersede the commission; or because the party appears not to have been a trader, that the party had not committed an act of bankruptcy, that the commission was not opened till three months after it issued, or that he has paid all his creditors.

1 Atk. 154.

2 Cha. Ca. 192.
Sel. Ca. Cha.
46.
1 Atk. 135.
1 Atk. 244.

But upon an application to the Lord Chancellor, on the part of the bankrupt, to supersede the commission, if the case appear unfavourable, as if a great length of time has intervened between the granting the commission and the application, the Chancellor will not grant an issue to try the bankruptcy, but leave the party to bring his action. However, if creditors apply to have the commission superseded, it should seem the Chancellor would then order the bankruptcy to be tried in an issue, because they can have no action at law, and the bankrupt's certificate is a conclusive bar against them, that of itself being evidence of the commission, &c.

Ex parte Nutt.
1 Atk. 102.

Though the usual course is for the Lord Chancellor to order a feigned issue to try the bankruptcy at law; yet if it appears plainly to have been taken out fraudulently and vexatiously, the court will at once supersede the commission, and order the petitioning creditor's bond to be assigned.

Richardson v
Bradshaw.
1 Atk. 228.
228.

Ex parte Gayter.
1 Atk. 144.

Of the Superedeas.

Ex parte
Goodwin.
7 Atk. 101.

But where a commission is superseded merely because there is a defect in form, as to the petitioning creditor's debt; but no manner of doubt as to the act of bankruptcy; the costs of the *superedeas* shall be allowed only; but it would be otherwise, if the act of bankruptcy had not been fully proved.



ADDENDUM.

A D D E N D U M.

SINCE the foregoing sheets were printed, I have been favoured with a case relative to the bankrupt's allowance.

A joint commission of bankrupt issued against the petitioner and *Tilman Henkell*. The joint debts amounted to 22,796 *l.* 13 *s.* 6 *d.* The joint effects to about 5000 *l.* The separate effects of the petitioner amounted to above 30,000 *l.* The debts proved upon his separate estate were 15,894 *l.* but of that sum 15,362 *l.* 7 *s.* 7 *d.* were in fact debts due from the partnership, but as the creditors were joint and several, they thought proper to come in upon the separate estate of the petitioner, as being the most solvent estate. *Henkell's* separate effects after paying his separate creditors, were about 1700 *l.* The joint creditors were paid 16 *s.* in the pound, of which (supposing the joint effects to be divided into moieties) the petitioner had contributed in the proportion of 12 *s.* 6 *d.* and *Henkell* of 3 *s.* 6 *d.*

Under these circumstances *Bate* petitioned, that the assignees might pay him his allowance of 10 *l.* per cent. not exceeding 300 *l.* in respect of the separate estate, according to the statute of 5 G. 2, c. 30. and that he might also have such allowance in respect of the joint estate as the court should think fit.

B b 2

The

Ex parte Bate.
June 23d. 1785.

The first question was, whether it was possible for the same person to have a double allowance, one in respect of the joint and the other of the separate effects; but the Lord Chancellor was clearly of opinion that could not be. But the principal question made was, whether under the circumstances of this case *Henkell* was intitled to any allowance, and if so, whether it was to be a part of the 300*l.* to which the petitioner *Bate* made claim, or whether the statute intended a distinct allowance of 300*l.* to each partner, when the joint creditors received 1*s.* in the pound.

His lordship declared, that the bankrupts were intitled to the sum of 300*l.* being one allowance only of 10*l.* *per cent.* in respect of their joint and separate estates, and that the same ought to be divided and paid to and between the bankrupts, according to the proportion which the surplus of each of their separate estates after payment of their respective separate debts, and their respective moieties of their joint estates have contributed to the payment of their joint debts.



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A P P E N D I X
O F
P R E C E D E N T S.

THE first step to be taken towards procuring a commission of bankruptcy, is for the creditor to make an affidavit of his debt before a Master in Chancery; or if he resides altogether in the country, before a Master Extraordinary there, to be filed in the secretary of bankrupts office, in *London*, and exhibited to the commissioners at their first meeting.

Affidavit of Debt to obtain a Commission.

A. B. of, &c. maketh oath that *John Wilson* of *Chelmsford*, in the county of *Essex*, shopkeeper, is justly and truly indebted unto him this deponent, and to *Thomas Abel* his partner, in the sum of 100*l.* and upwards, for goods sold and delivered by this deponent and his said partner, to and for the use of the said *John Wilson*; and this deponent further saith, that the said *John Wilson* is become a bankrupt within the true intent and meaning of some or one of the statutes made, and now in force concerning bankrupts, as this deponent hath been informed and believes.

A. B.

Sworn at the Publick-Office, the
1st day of *September*, 1784, before
me, *Peter Holford*.

* A

Affidavit

Affidavit of several Petitioning Creditors.

A. B. of, &c. *C. D.* of, &c. *E. F.* of, &c. *G. H.* of, &c. severally make oath and say, and first this deponent *A. B.* for himself saith, that *John Wilson*, of, &c. is justly indebted unto him this deponent in the sum of 30*l.* for, &c. And this deponent *C. D.* for himself saith, that, &c. [as before] and all these deponents say, that they verily believe that the said *John Wilson* is become a bankrupt within the true intent and meaning of some or one of the statutes made and now in force concerning bankrupts.

A. B. *E. F.*
C. D. *G. H.*
All sworn, &c.

The Affirmation of a Quaker.

Thomas Abel, of, &c. being one of the people called Quakers, upon his solemn affirmation, saith, &c. [as in an affidavit, only that instead of the word "deponent" the word "affirmant" is used.]

When the affidavit is sworn, you carry it to the bankrupts office, where the party suing for the commission enters into a bond to the Lord Chancellor in 200*l.* penalty to prove his debt, and the person a bankrupt.

The clerk of the bankrupts fills up a Blank petition in the name of the person that makes the affidavit, and annexes the affidavit and bond to the petition, when he prefers the same to the Lord Chancellor.

This

This petition is answered in a few days, and you have a commission without any further trouble.

The Creditors Petition to the Great Seal for a Commission of Bankrupt.

To the right honourable *Edward Lord Thurlow*, Baron *Thurlow* of *Abfield* in the county of *Suffolk*, Lord High Chancellor of *Great Britain*.

In all humble manner complaining, sheweth unto your lordship your orator *Thomas Abel*, of, &c. as well for himself, as for all other the creditors of *John Wilson*, of, &c. That whereas the said *John Wilson*, using and exercising the trade of a merchant, dealer, and chapman, by way of bargaining, exchange, bartering, and chevizance, seeking his trade of living, by buying and selling upon just and good causes, for wares and merchandizes to him sold and delivered; and also for ready money to him lent, being indebted unto your orator in the sum of 100 £. and upwards, of late (that is to say) about the month of *last* past, did become bankrupt, within the several statutes made against bankrupts, to the intent to defraud and hinder your said orator and others his creditors, of their just debts and duties to them due and owing, (that is to say) within the statute made in the parliament begun and holden at *Westminster*, the second day of *April*, in the thirteenth year of the reign of *Elizabeth* late queen of *England*, concerning bankrupts; and within the statute made in the parliament begun and holden at *Westminster* aforesaid, the 19th day of *March*, in the first year of the reign of the late king *James* the first of *England*, *France*, and *Ireland*, and of *Scotland*, the seven

and thirtieth, intituled "An act for the better relief of creditors against such as shall become bankrupts;" and also within the statute made in the parliament begun and holden at *Westminster* aforesaid, the 19th day of *February*, in the one and twentieth year of the reign of the said late king *James* the first of *England*, *France*, and *Ireland*, and of *Scotland*, the seven and fiftieth, intituled, "An act for the further description of a bankrupt, and relief of creditors against such as shall become bankrupts, and for inflicting corporal punishments upon the bankrupts in some special cases;" and also within the statute made in the fifth year of the reign of his late majesty king *George* the second, intituled, "An act to prevent the committing of frauds by bankrupts," or within some or one of them. In tender consideration whereof, may it please your lordship to grant unto your orator, his majesty's most gracious commission, to be directed to such and so many, wise, honest, and discreet persons, as to your lordship shall seem meet; authorizing them thereby not only concerning the said bankrupt, his body, lands, tenements, freehold and customary goods, debts, and other things whatsoever, but also concerning all other persons, who, by concealment, claim, or otherwise, do or shall offend touching the premises, or any part thereof, contrary to the true intent and meaning of the said statutes. To do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes, according to the ordinance and provision of the said statutes, and of any other statutes in force concerning bankrupts. And your orator shall ever pray, and so forth.

day of

1784.

Let

Appendix of Precedents.

Let a commission, issue as pray-
ed; and be directed to
William Bumpstead,
Henry Hunter, & *Hindley,* deputy.
Henry Russell,
Henry Cowper, Esqrs. and
Richard Hargrave, Gent.
Thurlow, C.

A Commission of Bankrupt.

George the third, by the grace of *God,* of *Great Britain,*
France, and *Ireland,* king, defender of the faith, &c. to
our trusty and well-beloved *William Bumpstead, Henry*
Hunter, Henry Russell, Henry Cowper, Esquires, and Richard
Hargrave, Gentleman, greeting. Whereas, we are in-
formed that *John Wilson,* of, &c. using and exercising the
trade of a merchant, by way of bargaining, exchange,
bartering, and chevizance; seeking his trade and living;
by buying and selling, about since, did be-
come bankrupt within the several statutes made against
bankrupts, to the intent to defraud and hinder *Thomas Abel,*
of, &c. and other his creditors of their just debts and du-
ties to them due and owing. We, minding the due exe-
cution as well of the statute touching orders for bankrupts,
made in the parliament begun and holden at *Westminster,*
the second day of *April,* in the thirteenth year of the reign
of *Elizabeth* late queen of *England,* made and provided; as of
the statute made in the parliament begun and holden at
Westminster aforesaid, the nineteenth day of *March,* in the
first year of the reign of the late king *James* the first, of
England, France, and Ireland, and of *Scotland,* the seven and
thirtieth, intituled, "An act for better relief of creditors
against

"against such as shall become bankrupts." And also the statute made in the parliament begun, and holden at Westminster aforesaid, the nineteenth day of February, in the one and twentieth year of the reign of the said late king James the first of England, France, and Ireland, and of Scotland, the seven and fiftieth, intituled "An act for the further description of a bankrupt and relief of creditors against such as shall become bankrupts, and for inflicting corporal punishments upon the bankrupts in some special cases." AND ALSO of the statute made in the fifth year of the reign of king George the second intituled, "An act to prevent the committing of frauds by bankrupts." UPON TRUST of the wisdom, fidelity, diligence, and provident circumspection, which we have conceived in you, do by these presents, name, assign, appoint, constitute and ordain you, our special commissioners, HEREBY giving full power, and authority unto you, four or three of you, to proceed according to the said statutes, and all other statutes in force concerning bankrupts, not only concerning the said bankrupt, his body, lands, tenements, freehold, and customary goods, debts, and all other things whatsoever, but also concerning all other persons, who by concealment, claim, or otherwise, do, or shall offend, touching the premises, or any part thereof, contrary to the true intent and meaning of the said statutes. AND TO DO AND EXECUTE all and every thing and things whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes, according to the ordinance and provision of the same statutes. WILLING and commanding you, four or three of you, to proceed to the execution and accomplishment of this our commission, according to the true intent

and meaning of the same statutes, with all diligence and effect. **WITNESS** ourself at *Westminster*, the day of _____ in the year of our reign.

J. Yorke.

Having got the commission, you must employ one of the messengers to summon a meeting of the major part of the commissioners to open the same, when the petitioning creditor must come prepared, to prove his debt, and the party a bankrupt within the statutes; but, before the commissioners proceed to execute the commission, they must take the oath * required by the 5 G. 2. c. 30.

At this private meeting, the commissioners appoint the sittings at *Guildhall*, which ought to be indorsed on the preamble to the proceedings.

Preamble to the Proceedings under a Commission.

Proceedings, examinations, and depositions had and taken at *Serle's* coffee-house *Lincoln's Inn*, in the county of *Middlesex*, this 14th day of *April*, in the year of our Lord, 1784, under, and by virtue of his majesty's commission of bankrupt awarded, and issued against *John Wilson* of, &c. directed to us, *William Bumpstead*, *Henry Hunter*, and *Henry Russel*, Esquires, together with *Henry Couper* Esquire, and *Richard Hargrave* Gentleman, in the said commission named, which said commission is dated at *Westminster*, the 12th day of *April*, in the 24th year of the reign of our sovereign lord *George* the third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, and so forth; and in the said year of our Lord 1784.

* Ante go.

Another Form.

At the Roll's Coffee-house, in Chancery-Lane, the 14th day of April, one thousand, seven hundred and eighty four.

Depositions and examinations, and other proceedings, had and taken under a commission of bankrupt, awarded and issued against *John Wilson*, late of *Chelmsford*, in the county of *Essex*, shopkeeper, grocer and chapman.

Memorial of the Commissioners, having qualified themselves to act under the Commission, by taking the Oath pursuant to the Statute.

MEMORANDUM, That we, *William Bumpstead*, *Henry Hunter* and *Henry Russel*, Esquires, whose names are hereunder written, being the major part of the commissioners, named and authorised, in and by a commission of bankrupt awarded and issued against *John Wilson*, of *Chelmsford*, in the county of *Essex*, shopkeeper, grocer, and chapman, bearing date at *Westminster*, the 12th day of *April*, instant, did personally administer to each other, and take the oath prescribed, or appointed by an act of parliament, made in the fifth year of the reign of his late majesty king *George* the second, (intituled an act to prevent the committing of frauds by bankrupts) for commissioners to take before they proceed in any commission of bankrupt, before we acted in the execution of the said commission.

William Bumpstead.

Henry Hunter.

Henry Russel.

Witness.

John Knight.

Proof

Proof of the Petitioning Creditor's Debt.

*At the Roll's Coffee-house in Chancery Lane, the
14th day of April, one thousand, seven hundred,
and eighty four.*

William Bumpstead. *Thomas Abel* of the parish of *St. Faith*
the Virgin, London, being sworn and
examined the day and year, and at the
place above-written, upon his oath saith,

That *John Wilson*, the person against
whom the commission of bankrupt is
awarded, was before the date, and suing
forth of the said commission, and still is
justly and truly indebted unto him this
deponent, in the sum of two hundred

pounds, for goods sold and delivered by
this deponent, to the said *John Wilson*;
for which said sum, or any part thereof,
this deponent hath not received any
security or satisfaction whatsoever.

Henry Hunter. *Thomas Abel.*

*Oath to be administered by the Commissioners, to the
Witnesses, upon their Examination.*

You are here produced, as witnesses, by virtue of a
commission out of the High Court of Chancery, to us,
and others directed, to be by us examined, concerning the
bankruptcy of *John Wilson* of, &c. Now to all such ques-
tions, and interrogatories as shall be asked you, by virtue

of

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of this commission of bankrupt, concerning the said *John Wilson*, his trade or profession, his absconding, and other acts which he hath done or suffered, by which he may be discovered to be bankrupt: and also concerning his lands and tenements, goods and chattels, debts and duties, frauds and concealments, and other matters and things, in obedience to the said commission, and pursuant to the several statutes made concerning bankrupts, you, and every of you shall, true and direct answer make, and swear the truth, the whole truth, and nothing but the truth.

So help you God.

If the party is a *Quaker*, then instead of swear, say,
 "You shall solemnly, sincerely, and truly, declare and affirm."

After the petitioning creditor has proved his debt, you proceed to prove the trading.

At the Roll's Coffee-house, in Chancery-Lane, the
 14th day of April, 1784.

William Bumpstead, A. B. of, &c. being sworn and examined, (being one of the people called *Quakers*, being affirmed and examined) on the day, and year, and at the place above mentioned before the major part of the commissioners named and authorised, in and by a commission of bankrupt, awarded and issued, and now in prosecution against *John Wilson* of, &c. upon his oath, (upon his solemn affirmation) saith, that he hath known the said *John Wilson*, for the space of three

three years now last past, during which time the said *John Wilson*, did use and exercise the trade and business of a banker, and as such, was intrusted with the money, goods and effects belonging to other persons, and merchandized therewith, and sought and endeavoured to get his living thereby, as others of the same trade and business, usually do.

A. B.

At. &c.

William Bumpstead. A. B. of, &c. being sworn and examined, the day and year, and at the place above mentioned, before the major part of the commissioners, named and authorised, in and by a commission of bankrupt awarded and issued, and now in prosecution, against *John Wilson*, &c. upon his oath, saith that the said *John Wilson* did exercise, and carry on the trade, and business of a pawn-broker, and as such received goods and effects by way of pawn, or pledge, and lent monies thereon, and hath so done to this examinant's knowledge, for the space of one year, and upwards, now last past; and did seek and endeavour to get his livelihood thereby, in the same manner as others of that trade, and business usually do.

A. B.

At,

Henry Hunter. *At, &c.* being sworn and examined the day and year, and at the place above mentioned, before, &c. upon his oath, faith, that he hath known *John Wilson* of, &c. against whom the commission of bankrupt, now in prosecution, is awarded and issued, for the eighteen months last past; during which time, he did carry on the trade of a merchant, and did trade from this kingdom of *England* to *Ireland*, and divers other places beyond the seas, and did seek and endeavour to get his living thereby, as other merchants usually do.

A. B.

William Bumpstead. *A. B.* of, &c. being sworn, &c. during which time he carried on, and exercised the trade and business of a broker, in buying and selling stock, by commission, and procuring insurances on ships, and cargoes for lucre and gain, and sought, and endeavoured to get his livelihood thereby, as others of the same trade and business are used to do.

Henry Hunter. *At, &c.*

William Bumpstead. *A. B.* of, &c. being sworn, &c. during which time he used and exercised the trade of a factor by buying and selling goods by commission, and sought and endeavoured to get his livelihood there- by,

Henry Ruffel. by, as others of the same trade usually do.

C. D.

At, &c.

William Bumpstead. A. B. of, &c. being sworn, &c. during which time, he carried on the trade or profession of a scrivener, and as such, received other men's monies, and

Henry Hunter. estates, into his trust and custody, and made merchandize thereof, and sought and endeavoured to get his living thereby, in the same manner as others,

Henry Ruffel. of that profession are used to do.

C. D.

At, &c.

William Bumpstead. A. B. of &c. being sworn, &c. during which time he exercised the trade or

Henry Hunter. business of an hosier, in buying and selling stockings, and gloves, and sought and endeavoured to get his living there-

Henry Ruffel. by, as others of the same trade are used to do.

C. D.

At, &c.

William Bumpstead. A. B. of, &c. being sworn, &c. during which time he used, exercised and carried on the trade and business of a shoe-

Henry Hunter. maker, by buying of leather, and working up, and converting the same into shoes, boots, and patteredashes, and sell-

Henry Ruffel. ing the same, when so worked up, and converted as aforesaid, and sought, &c.

C. D.

At,

At, &c.
William Bumpstead. *A. B.* of, &c. being sworn, &c. during which time he used the trade of a taylor, in buying cloth, silk, linen, buckram, and other materials; and making them up into clothes, and selling the same, when so made up, and sought, *Henry Hunter.* and endeavoured to get his living thereby, as others in that trade are wont to do.

C. D.

Where the trade of the bankrupt cannot be otherwise conveniently described, he may be termed, a *dealer and chapman*, which includes all kinds of trading.

After the petitioning creditor's debt, and the trading is established, the party must proceed to prove the act of bankruptcy.

All the depositions must be signed by the witnesses.

At, &c.
William Bumpstead. *A. B.* one of the servants of *John Wilson* of, &c. the person against whom the commission of bankrupt now in prosecution, is awarded and issued, being sworn and examined on the day and year, and at the place above mentioned, before the major part of the commissioners, in and by the said commissioner named and authorised, upon his oath saith, that on *Monday* morning last the said *John Wilson* gave orders to this examinant

examinant to deny his being at home,
Henry Hunter. in case any of his creditors should come
to his house to enquire for him; and that
after this examinant had received such
directions from his said master, one
Mr. Abel, about twelve of the clock
of the same morning, came to his mas-
ter's house, and enquired of this exa-
minant, for the said *John Wilson*, and told
this examinant that he came for money
due from the said *John Wilson*, to him the
said *Thomas Abel*. But this examinant
denied his being at home, and re-
fused to let the said *Mr. Abel* see the
said *John Wilson*, (who was then above
stairs, in his chamber, as this examinant
believes) pursuant to the order and
direction by him, this examinant receiv-
ed from the said *John Wilson*. This
examinant at the same time knowing
that the said *Mr. Abel* was a creditor
of the said *John Wilson*'s.

Henry Ruffel.

A. B.

At, &c.

William Bamystead.

A. B. of, &c. being sworn and
examined on the day and year, and at
the place above mentioned before, &c.
upon his oath saith, That *John Wilson*,
the person against whom the com-
mission of bankrupt now in prosecution,
is awarded and issued, did within the
space of three months, now last past,
take an apartment or lodgings in *Spring
Gardens*,

Henry Hunter in *Spring Gardens*, in the city and liberty of *Westminster*, for the purpose of screening himself from his creditors, as this examinant verily believes, because the said *John Wilson* declared to this examinant, that the reason of his taking the said apartment or lodgings in *Spring Gardens* was, for fear of his being arrested by his creditors, some or one of them for debt, and at the same time informed this examinant that the said apartment or lodgings were privileged; they being in the verge of the court.

A. B.

At, &c.

William Bumpstead.

A. B. of, &c. being sworn, &c. hath departed from, and left his dwelling house [or his lodgings in this examinant's house, and usual place of habitation] for several days now last past, and from the discourse which this examinant hath had with the said *John Wilson*, and as this examinant verily believes, he doth secrete himself from his creditors for fear of being arrested by them, or some or one of them for debt.

A. B.

At, &c.

William Bumpstead.

A. B. of, &c. being sworn and examined the day and year, and at the place above mentioned, before the major part of the commissioners named and authorised, in and by a commission of bankrupt

rupt

run awarded and issued and now in prosecution against *John Wilson* of, &c. upon his oath saith, that the said *John Wilson*, through misfortunes in trade, being rendered incapable to pay all his creditors their full and just demands, did send this examinant up to *London*, to endeavour to compromise his affairs with his creditors, and accordingly this examinant did come up to *London*, on or about the 4th day of *March* last past, and met the said *John Wilson* at *Chelsea*, at which time the said *John Wilson* declared to this examinant, that he was unwilling and afraid to meet his creditors; and that on or about the same time, he gave him this examinant a letter of attorney, to make an end of his affairs, if the creditors would consent thereto. And also declared to this examinant, that if his said creditors would not comply with such terms as this examinant should propose to them, that then he, this examinant, should act and transact his affairs for the best of his interest; and this examinant further saith, that the said *John Wilson* hath several times declared to this examinant, that in case any statute of bankrupt should be taken out against him, that he would not appear thereto; and when this examinant saw him last, which this examinant believes to be on or about the 6th day of *March* last past, the said

Henry Russell,

John Wilson declared to this examinant, that in case his creditors would not comply with the proposals he had power to make them, that they should not hear from him till next, and believes that nobody, either in *London*, or, &c. knows where he is gone.

A. B.

At &c.

William Bumpstead,

A. B. of &c. being sworn and examined on the day and year, and at the place above mentioned, before, &c. upon his oath saith, that he was present, and did see *John Wilson*, of, &c. the person against whom the commission of bankrupt now in prosecution, is awarded and issued, duly sign, seal, and as his act and deed deliver a certain indenture;

Henry Hunter,

[here set forth a short recital of the material parts of it] and this examinant further saith, that the name *John Wilson* subscribed against the seal of the said indenture, (now produced to him this examinant, at the time of this his examination, and exhibited to the major part of the commissioners, in and by the said commission named and authorized) is the proper hand-writing of the said *John Wilson*; and this examinant further saith, that the name of this examinant subscribed to the said indenture as a witness to the execution thereof,

is of this examinant's own proper hand-writing.

A. B.

At, &c.

William Bumpstead,

A. B. of, &c. being sworn and examined the day and year; and at the place above mentioned; before the major part of the commissioners named and authorized in and by the commission of bankrupt, awarded and issued, and now in prosecution against *John Wilson*; of, &c. upon his oath saith, that the said *John Wilson* is protected by

ambassador to he

this examinant having seen the said protection under the hand and seal of the said ambassador; in the possession of the said *John Wilson*; and this examinant further saith, that he verily believes that the said *John Wilson* procured the said protection for the purpose of screening himself from his creditors, and to prevent his being arrested by them for debt, because he this examinant on or about the 4th day of *March* now last past, was present and in company with the said *John Wilson* and

one of the officers belonging to the sheriff of *Middlesex*, who told the said *John Wilson* that he had a warrant to arrest him the said *John Wilson*, at the suit of *Thomas Abel*, for 100*l.* debt,

* B 2

whereupon

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whereupon the said *John Wilson* produced his said protection to the said and claimed privilege by virtue thereof, and bade the said to arrest him at his peril, which the said *Henry Russell*, declined to do, on account of the said protection, as this examinant believes.

A. B.

At, &c.

William Bumpstead, A. B. of, &c. officer to the sheriff of *Middlesex*, being sworn and examined the day, &c. before the major part of the commissioners named and authorized in and by a commission of bankrupt, awarded and issued, and now in prosecution against *John Wilson*, of, &c. on the day and year, and at the place above mentioned, upon his oath saith, that on the 4th day of *March* last, he this examinant arrested the said *John Wilson*, by virtue of, &c. and detained him in his custody until the 6th day of *March* next following, when he this examinant, in obedience to his majesty's writ of *habeas corpus cum causa* directed to the sheriff of *Middlesex*, did conduct the body of the said *John Wilson* before Sir *Henry Gould*, Knight, one of the King's Justices of the Bench, at his house in *Lincoln's-Inn Fields*, in the said county of *Middlesex*, according to the command of the said writ,

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writ, which said justice did then and there receive from him, this examinant, the body of the said *John Wilson*, and did commit him to the custody of the warden of the fleet.

A. B.

At, &c.

William Bumpstead,

A. B. of, &c. gentleman, who executes the office of clerk of the papers of the Fleet prison, for *John Eyles*, Esquire, warden of the said prison, being sworn and examined the day and year, and at the place above mentioned, before, &c. upon his oath saith, that *John Wilson*, the person (as this deponent is informed and believes) against whom the commission of bankrupt now in prosecution, is awarded and issued, was, on the 6th day of *March* last, committed to his majesty's prison of the Fleet, by the honourable Sir *Henry Gould*, knight, one of the justices of his majesty's court of Common Pleas, at *Westminster*, upon a writ of *habeas corpus cum causâ*, directed to the sheriff of *Middlesex*, who certified and returned to the said writ that the said *John Wilson* in the said writ named, was, on the 4th day of *March*, in the year of his present majesty's reign, taken and detained by him the said sheriff, by virtue of a writ of, &c. to answer *Thomas Abel*, of a plea

of trespass upon the case to the damage of the said *Thomas Abel*, of 100*l.* which said *John Wilson* so taken and detained as aforesaid, is, as this examinant is informed and believes, the same person against whom the aforesaid commission is awarded: and this examinant further saith, that the said *John Wilson* hath ever since the day of his said commitment to the prison of the Fleet aforesaid, remained and continued a prisoner therein at the suit of the said *Thomas Abel*, and now is a prisoner there, charged in manner as aforesaid.

Henry Russel,

But the certificate of the clerk of the papers, with a deposition of its being signed by him, is the usual proof given of the lying in prison two months.

At, &c.

William Bumpstead, *A. B.* of the city of *London*, merchant, and *John Knight*, of *New Inn*, in the county of *Middlesex*, gentleman, being severally sworn and examined the day and year, and at the place above-mentioned, before the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued, and now in prosecution against *John Wilson*, of, &c. upon their respective oaths say; and first this examinant, *A. B.* for himself saith, that on or about the 4th day of *March* now last past, he this examinant, by virtue of

an act of parliament made and passed in the fourth year of the reign of his present majesty king George the third, intituled "An act for preventing inconveniences arising in cases of merchants, and such other persons as are within the description of the statutes relating to bankrupts, being intituled to the privilege of parliament, and becoming insolvent," did make *Henry Hunter* an affidavit in his majesty's court of King's Bench, at *Westminster*, that the said *John Wilson* was justly indebted unto him this examinant in the sum of 300*l*. and that the said *John Wilson* was, as this examinant verily believed, a trader within the description of the statutes relating to bankrupts. And this examinant further saith, that the said *John Wilson* hath not paid, secured, or compounded the said debt, or entered into any bond to pay such sum as should be recovered in the action, in pursuance of and according to the directions of the said act of parliament, to the knowledge or belief of this examinant. And this examinant *John Knight* for himself saith, that he did on the said day of file of record in the said court of King's Bench the said affidavit so sworn by the said other examinant *A. B.* *Henry B.* as aforesaid. And that he did on the day of sue out of the same court of King's Bench a summons against the said and on the next day, being the day of now last past, served him the said personally with a copy thereof.

A. B.

John Knight.

Where the same witness deposes both to the trading and act of bankruptcy one affidavit is sufficient.

Deposition of Trading and Act of Bankruptcy.

At, &c.
William A. B. of, &c. gentleman, being sworn and **Bumped**, examined the day and year above written, upon his oath saith, that he hath been acquainted with **John Wilson**, the person against whom the commission of bankrupt is awarded and issued for the space of ten years and upwards, and knows that during such time he the said **John Wilson** carried on and followed the trade of, &c. in the aforesaid, by, &c. and thereby sought and endeavoured to get his livelihood as others of the same trade or business usually do.
Henry Hunter, And this deponent further saith, that on Monday the 4th day of March, 1784, the said **John Wilson** told this deponent that he was afraid of being arrested by his creditors or some of them, and that he must be obliged to leave his house for fear of being arrested, and desired this deponent, who then lived in the house with the said **John Wilson**, not to acknowledge the cause of his departure. And this deponent further saith, that the said **John Wilson** did accordingly on the same day leave his house and absconded, for fear of being arrested by his creditors or some of them, as this deponent verily believes.

A. B.

If from the evidence produced the commissioners are satisfied the party is a bankrupt, they will make the following declaration.

At, &c.

MEMORANDUM, We whose names are hereunder written, being the major part of the commissioners, named and authorized, in and by a commission of bankrupt awarded and issued against *John Wilson*, late of, &c. (as described in the commission) having dealt in the said commission, upon good proof upon oath before us this day had and taken, do find that the said *John Wilson*, became a bankrupt within the true intent and meaning of some or one of the statutes made and now in force concerning bankrupts, before the date and suing forth of the said commission; and we do therefore declare and adjudge him bankrupt accordingly.

William Bunsystead,

Henry Hunter.

Henry Ruffel.

The following notice must be given in the *London* gazette, and the Solicitor should keep the gazette among the other proceedings under the commission.

Whereas a commission of bankrupt is awarded against *John Wilson*, late of, &c. merchant, and he being declared a bankrupt, is hereby required to surrender himself to the commissioners on the _____ and _____ instant, and on the _____ at ten of the clock in the forenoon, at *Guildhall, London*, at the second of which meetings the creditors are to come prepared to prove their debts and choose assignees: and all persons indebted to the said bankrupt, or that have any goods or effects of his in their hands are desired to give notice thereof to Mr.

Immediately

Immediately upon the commissioners declaring the party a bankrupt, they issue their warrant for seizure of his effects, and the messenger by virtue thereof seizes the effects, and continues to keep possession till the commissioners have executed the assignment.

Warrant of Seizure.

Whereas, his majesty's commission under the great seal of Great Britain, grounded upon the several statutes made and now in force concerning bankrupts, bearing date at Westminster, the same day with this our warrant, hath been awarded and issued against *John Wilson*, of, &c. directed unto us, who have hereunto subscribed our names and set our seals, together with *Henry Cowper*, Esquire, and *Richard Hargrave*, Gentleman; and we being the major part of the commissioners named and authorized by virtue of the said commission, having begun to put the said commission in execution, upon due examination of witnesses, and other good proof upon oath before us taken, have found that he the said *John Wilson* did for several years last past use and exercise the trade of in buying, &c. in the way of his trade aforesaid; and have also found that he the said *John Wilson*, by reason of such his dealing became indebted unto *Thomas Abel*, of, &c. in the sum of 200*l.* and upwards, for

And we have also found upon good proof upon oath, that the said *John Wilson* did, before the date and suing forth of the said commission become bankrupt, within the true intent and meaning of the several statutes made and now in force concerning bankrupts, some or one of them, before the date and suing forth of the commission; and we have adjudged and declared him bankrupt accordingly. These are therefore, by virtue

of the said commission and the several statutes therein mentioned, to will and require, authorise and impower you, and every of you to whom this our warrant is directed, forthwith to enter into, and open the house and houses of him the said *John Wilson*, and also to enter into all other place and places belonging to him the said *John Wilson*, where any of his goods are, or are suspected to be, and there seize all the ready money, jewels, plate, household stuff, goods, merchandizes, books of account, and all other things whatsoever belonging to him the said *John Wilson*. And such things as you shall so seize, you shall cause to be inventoried, and appraised by honest men of skill and judgment, and the same you shall return to us with all convenient speed; and what you shall so seize, you shall safely detain and keep in your possession, until we shall give you order for the disposal thereof; and in case of resistance, or the not having the key or keys of any door or lock belonging to any place or places of him the said *John Wilson*, where any of his goods are, or are suspected to be, you shall break open or cause the same to be broke open, for the better execution of this our warrant. Given under our hands and seals this day of
in the year of our Lord 1784.

To *David Cadell*, our messenger, and to all mayors, bailiffs, constables, headboroughs, and all other his majesty's loving subjects, whom we require to be aiding and assisting in the execution of this our warrant as occasion shall require.

William Bumpstead, (L. S.)

Henry Hunter, (L. S.)

Henry Russell, (L. S.)

Summons for the Bankrupt to surrender.

Whereas a commission of bankrupt on the day of *November* now last past, issued under the great seal of Great Britain, against you *John Wilson*, by the name and description of *John Wilson*, of, &c. And whereas the major part of the commissioners in and by the said commission named and authorised, have declared you to be bankrupt; We the said commissioners do hereby summon and require you the said *John Wilson* personally to be and appear before the commissioners in the said commission named, or the major part of them, on the day of *instant* instant, at eleven in the morning, and on the *and* and days of *next* next, at eleven in the morning, at *Guildhall* Guildhall, London, then and there to be examined, and to make a full and true discovery and disclosure of all your estate and effects, according to the directions of the several statutes made and now in force concerning bankrupts, and particularly the statute passed in the fifth year of the reign of his late majesty king *George the second* George the second, intituled "An act to prevent the committing of frauds by bankrupts;" and herein you are not to fail at your peril. Given under our hands this day of *1784* 1784.

William Bumpstead,

Henry Hunter,

Henry Russell.

To *John Wilson*,
the Bankrupt.

It is usual for the bankrupt to surrender himself at the first meeting, for the sake of being protected.

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Proceedings at the first Meeting.

Guildhall, London, 27th July, 1769.

Examinations and other proceedings taken at *Guildhall, London*, this twenty-seventh day of *July, 1769*. before the major part of the commissioners named and authorised in and by a commission of bankruptcy, awarded and issued against *Peter Hasenclever*, late of *London*, but now of *Putney* in the county of *Surrey*, merchant, bearing date the 12th day of *July, 1769*.

J. Bennet, *Peter Hasenclever*, late of *London*, but now of *Putney*, in the county of *Surrey*, merchant, (late one of the partners in trade with *Andrew Beton* and *Charles Crofts*, late of *London*, merchants, against whom a commission of bankrupt hath been lately awarded and issued) did the day and year and place abovesaid, pursuant to notice in the *London Gazette* for that purpose, surrender himself to the major part of the commissioners in and by the said commission named and authorised, and submitted himself to be from time to time examined touching the discovery of his estate and effects, and in all things to conform himself according to the directions of the several acts of parliament made and now in force concerning bankrupts, and particularly the late act of parliament made in the fifth year of his late majesty's reign, intituled "An act to prevent the committing of frauds by bankrupts, and to have the benefit thereof."

Peter Hasenclever.

The

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The said *Peter Hasenclever* being sworn and examined the day and year and at the place above said, upon his oath saith, that he is not at present prepared to make a full disclosure and discovery of his estate and effects, and humbly prays a further time for the doing thereof till the next day appointed in the *London Gazette* for that purpose.

George Hill,

Peter Hasenclever.

After the bankrupt has surrendered himself, the commissioners indorse a memorandum thereof upon his surrender, by which he will be protected.

At, &c.

The within named *Peter Hasenclever*, the day and year, and at the place abovementioned, surrendered to us whose names are hereunto subscribed, being the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued, and now in prosecution against the said *Peter Hasenclever*, and submitted himself to be from time to time examined touching the discovery of his estate and effects, and in all things to conform himself according to the directions of the several acts of parliament made and now in force concerning bankrupts, and declared upon his oath that he was not prepared to make a full disclosure and discovery of his estate and effects, and prayed further time for the doing thereof, which was granted to him accordingly by

J. Bennet,

Robert Fawcett,

George Hill.

Oath

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Oath for proving a Debt.

"To all such questions as shall be asked you by virtue
"of this commission awarded against *Peter Haseclever* you
"shall speak the truth."

So help you God.

Deposition of the petitioning Creditor's Debt.

J. Bennet, William Watlington, of Broad-street, London,
hosiery, being sworn and examined the day and
year and at the place aforesaid, upon his oath
faith, that *Peter Haseclever*, the person against
whom this commission of bankruptcy is awarded
and issued forth, (as being one of the partners in
trade with *Andrew Seton* and *Charles Crofts*, late
of *London*, merchants) was at and before the
date and issuing forth of the said commission,
and still is justly and truly indebted unto this de-
ponent and *John Hookham* and *William Stevens*,
his partners, in the sum of 92*l.* 19*s.* 10*d.* for goods
Robert sold and delivered, which, with the sum of 1000*l.*
Fawcett, before proved by this deponent, make together
1092*l.* 19*s.* the sum of 1092*l.* 19*s.* 10*d.* for which said sum
10*d.* of 1092*l.* 19*s.* 10*d.* or any part thereof, he this
deponent has not, nor have his said partners
nor either of them to the knowledge or belief
of this deponent, received any security or satis-
faction whatsoever, save and except that a debt
due from the said *Peter Haseclever*, *Andrew*
George Seton, and *Charles Crofts*, to this deponent and
Hill, his said partners, hath been proved under a
commission

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commission of bankrupt awarded and issued forth
against the said *Charles Croft*.

William Watlington.

Deposition of an Insurance Broker.

J. Becket, *George Dallas*, of London, insurance broker,
being sworn, &c. that *Peter Hasenclever*, the
person against whom this commission of bank-
ruptcy is awarded and issued forth, as being one
of the partners, &c. was at and before the
date and suing forth of the said commission, and
still is justly and truly indebted unto this depo-
nent and *David Hodges* this deponent's partner,
1861. 18s. in the sum of 1861. 18s. 10d. on the balance
10d. of accounts for money paid, laid out and ex-
pended by this deponent and his said partner,
for which said sum of 1861. 18s. 10d. or any
part thereof he this deponent hath not, nor hath
Robert Fawcett, his said partner to his knowledge or belief re-
ceived any security or satisfaction whatsoever.

George Dallas.

For Goods sold and delivered.

J. Becket, *William Tatnall*, of Ironmonger Lane, London,
warehouse-man, being sworn, &c. That *Peter*
Hasenclever, the person against whom this com-
mission of bankruptcy is awarded and issued
forth, as being one of the partners, &c. was at
and before the date and issuing forth of the said
commission, and still is justly and truly indebted
Robert Fawcett, unto this deponent and *William Tatnall*, his son
and

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507*l.* 14*s.* and partner, in the sum of 507*l.* 14*s.* 3*d.* on
3*d.* the balance of accounts for goods sold and de-
livered, for which said sum of 507*l.* 14*s.* 3*d.*
or any part thereof, he this deponent hath not,
George nor hath his said partner, to his knowledge or
Hill, belief, received any security or satisfaction what-
soever.

William Tatnall.

For Money lent and Premiums of Insurances.

J. Bennet. Samuel Wilson, the younger, of London, mer-
chant, being sworn, &c. That Peter Hasen-
clever, the person against whom this commission
of bankruptcy is awarded and issued forth, as
being one of the partners, &c. was at and be-
fore the date and issuing forth of the said com-
mission, and still is justly and truly indebted unto
508*l.* 10*s.* this deponent in the sum of 508*l.* 10*s.* 9*d.* on
9*d.* the balance of accounts for money lent and for
Robert premiums on insurances, for which said sum of
Fawcett, 508*l.* 10*s.* 9*d.* or any part thereof, he this de-
ponent hath not received any security or satis-
faction whatsoever, save and except a pro-
missory note under the hand of the said Andrew
Seton for 508*l.* 6*s.* 8*d.* payable two months
after date to Messrs. Hasenclever, Seton, and
Croft, and by them indorsed to this deponent,
George which said note is dated the 15th day of Sep-
Hill, tember, 1766.

Samuel Wilson, jun.

Deposition of a Creditor where he has sold the Debt.

David Barclay of London, insurance broker, and *Alexander Anderson* of London merchant, being examined the day and year, and at the place aforesaid. The said *David Barclay* (being one of the people called *Quakers*;) doth solemnly, and sincerely affirm, that *Peter Hasenclever* the person against whom this commission of bankrupt is awarded and issued forth, (as being one of the partners in trade, with *Andrew Seton* and *Charles Crofts* late of London merchants,) was before the date and issuing forth of the said commission justly and truly indebted unto this affirmant in the sum of fifty-eight pounds one shilling, for money paid, laid out, and expended by this affirmant for the said bankrupt and his said partners; and also for work and labour, and for which said sum of fifty-eight pounds one shilling, or any part thereof, he this affirmant hath not received any security or satisfaction whatsoever. And the said *Alexander Anderson* being sworn, the day and year, and at the place aforesaid, upon his oath saith, that he did before the date and issuing forth of the said commission, for a valuable consideration, purchase of the said *David Barclay*, the said debt of fifty-eight pounds one shilling, and therefore this deponent saith, that the said *Peter Hasenclever* was at, and before the date and issuing forth of the said commission, and still is justly indebted, to this deponent in the sum of

43*l.* 10*s.* forty-three pounds ten shillings and seven
7*d.* pence,

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pence, this deponent having received the residue of the said debt before the date and issuing forth of the said commission, for which said sum of forty-three pounds ten shillings and seven pence, or any part thereof, he, this deponent hath not received any security or satisfaction whatsoever.

David Barclay.

Alexander Anderson.

On a Bill of Exchange.

J. Bennet. William Blake of Blandford in the county of Dorset, mercer, being sworn, &c. That Richard Enchmarch, and Francis Enchmarch, the persons against whom the commission of bankrupt is awarded and issued, were before the date and issuing forth of the said commission, and still are justly and truly indebted to this deponent in the sum of six hundred and ninety-seven pounds one shilling, upon balance of accounts for money paid and advanced by this deponent, to Messrs. John Tozer and Co. upon two bills of exchange, both drawn by the said bankrupts, on Henry Uthoff Esquire and Co. merchants London, and accepted by them, and both payable sixty days after date, to Messrs. John Tozer and Co. or order; one of them for the sum of three hundred pounds, and the other for the sum of four hundred and forty pounds, for value in account, both of which said bills of exchange are dated the twenty-eighth day of March, 1761. and severally indorsed by John Tozer and Co.

Robert Fawcett.

And this deponent further saith, that he hath
Geo. Hill. not had or received the said debts, or any part
 thereof, save the aforesaid two bills of ex-
 change.

William Blake.

*Deposition of a Country Creditor sworn before a
 Master Extraordinary there in Chancery.*

In the matter of *Richard Enchmarch*
 and *Francis Enchmarch.* Bankrupts.

Henry Lane, formerly of *Penzance* in the
 county of *Cornwal*, but now of *Tiverton* in the
 county of *Devon*, clerk, maketh oath that *Rich-*
ard Enchmarch, and *Francis Enchmarch*, of
Tiverton aforesaid, merchants and partners a-
 gainst whom a commission of bankrupt hath
 been lately awarded, were before the date and
 suing forth of the said commission, and still
 are justly and truly indebted to this deponent in
 the sum of one hundred pounds for principal
 money lent by this deponent before that time to
 the said *Richard* and *Francis Enchmarch*; and
 in the sum of three pounds for interest for the
 same. And this deponent saith, that he hath not
 had or received any manner of satisfaction or
 security whatsoever for all or any part of the
 said one hundred pounds and interest, other
 than and except one bond or obligation, bear-
 ing date the fifth day of *August*, one thousand
 seven hundred and fifty five, given and entered
 into

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into by the said *Richard Enchmarch* and *Francis Enchmarch*, unto this deponent in the penal sum of two hundred pounds.

Henry Lane.

Sworn at *Tiverton* aforesaid,
this thirteenth day of *May*,
1761 before me

20th *May* 1761.

James Kirkpatrick, a
Master extraordinary.

exhibited to us

T. Burrel

Al. Wedderburn

El. Woodcock.

Deposition of an Administratrix.

J. Bennet.

Anne Wilson of, &c. widow and administratrix of all and singular the goods and chattels rights and credits which were of, &c. at the time of his death; being sworn, &c. That *Peter Hasenclever* the person against whom this commission of bankruptcy is awarded and issued forth, as being one of the partners, &c. was at

Robert

Fawcett.

and before the date and issuing forth of the said commission, and still is justly and truly indebted unto this deponent in the sum of for goods sold and delivered by the said in his life time, to the said *Peter Hasenclever*, before he became bankrupt, for which said sum of or any part thereof, this depo-

George Hill.

nent hath not received, nor did the said in his life time to her knowledge or belief, receive any security or satisfaction for the same.

Anne Wilson.

Deposition by Bankrupt and his Assignees.

J. Bennet. *A. B.* late of, &c. against whom a commission of bankruptcy is awarded, and issued, and now in prosecution, and *Thomas Abel* of, &c. and *William Blake* of, &c. joint assignees of the estate and effects of the said bankrupt, being severally sworn and examined, the day and year, and at the place aforesaid, upon their respective oaths say, and first this deponent *A. B.* for himself saith, that *Peter Hasenclever*, the person against whom this commission of bankruptcy is awarded and issued forth, as being one of the partners, &c. is justly and truly indebted to the said *Thomas Abel* and *William Blake*, as assignees of the estate and effects of this deponent and to the said estate and effects in the sum of _____ for, &c. by him this deponent before he became bankrupt, which said sum of _____ or any part thereof, he this deponent hath not received, nor have or hath the said other deponents, or either of them, to his knowledge or belief, received the said sum of money or any security or satisfaction for the same. And these deponents, *Thomas Abel* and *William Blake*, upon their several oaths, each speaking for himself respectively, say that they have not, nor hath either of them received the said sum of _____ or any part thereof, or any satisfaction or security for the same, to the knowledge or belief of the other of them.

*A. B.**Thomas Abel.**William Blake.**Deposition*

Deposition of an Attorney.

J. Bennet. *John Knight* of, &c. being sworn, &c. that *Peter Hasenclever*, the person, &c. was at and before the date and issuing forth of the said commission, and still is justly and truly indebted unto this deponent in the sum of _____ for the attendance fee, and monies laid out and expended by him this deponent, in and about the affairs and business of the said *Peter Hasenclever*, before he became bankrupt; for which said sum of _____ or any part thereof, he this deponent has not received any security
Geo. Hill, or satisfaction whatsoever,

John Knight.

On a Decree.

J. Bennet. *William Blake* of, &c. being sworn, &c. That *Peter Hasenclever* the person, &c. was at and before the date and issuing forth of the said commission, and still is justly and truly indebted unto him this deponent in the sum of _____ decreed to this examinant by a decree of the high Court of Chancery, dated the _____ day of _____ now last past, pronounced before the said *Peter Hasenclever* became bankrupt, in a cause depending in the said court, wherein he, this deponent is complainant, and the said bankrupt is defendant, for which said sum of _____
Geo. Hill, or any part thereof, he, this deponent hath not received any security or satisfaction whatsoever.

William Blake.

On

On a Judgment.

J. Bennet. *William Blake of, &c. being sworn, &c.*
 That *Peter Hasenclever*, the person, &c. was
 at and before the date and issuing forth of the
 said commission, and still is justly and truly
 indebted unto him this deponent in the sum of
 before he became bankrupt for
 damages and costs recovered by this deponent,
 in his Majesty's court of King's Bench, at
Robert Westminter, in or about term last,
Fawcett. against the said bankrupt, in an action upon
 the case for promises, for which said sum of
 or any part thereof, this deponent hath
 not received any satisfaction or security whatso-
 ever, save and except the said judgment in the
Geo. Hill. said court of King's Bench, signed on or about
 the day of and entered on the
 roll, No.

William Blake.

Deposition on a Mortgage.

J. Bennet. *Jahn Wilson of, &c. being sworn, &c.* That
Peter Hasenclever, the person, &c. was at and be-
 fore the date and issuing forth of the said com-
 mission, and still is justly and truly indebted unto
 this deponent in the sum of &c. for which
 said sum of or any part thereof, he this
 deponent hath not received any security or sa-
 tisfaction whatsoever, save and except one in-
 denture of mortgage bearing date the
 day

John Wilson.

On a Note of Hand.

Thomas Wagstaff.

Upon a Policy of Insurance.

J. Bennet. *Alexander Anderson* of London, merchant, being sworn, &c. That *Peter Hafenclever*, the person, &c. was at and before the date and suing forth of the said commission, and still is justly and truly indebted unto this deponent in the sum of *£1000* by virtue of a policy of insurance

insurance made out in the names of
 and subscribed by the said *Peter*
Hafenclever, on or about the
 and before he became bankrupt, for the sum of
 upon goods loaden or to be
 loaden on board the ship *Fortitude*, *A. B.* master,
 for a voyage at and from *Jamaica* to *London*,
 at premium, and in case of loss to
 abate 2 *per cent.* And by the said policy it was
 and is agreed that the said goods and merchan-
 dizes should be valued at 150 *l.* and no other or
 further proof of interest should be required than
 by the said policy. And the assurers thereby
 agreed that the production of the said policy
 should be a sufficient proof, not only of the amount
 or value of the interest as therein before agreed,
 but also of the property of the assured in the said
 goods without any other evidence whatsoever,
 and it was and is by the said policy further
 agreed, that in case the ship and cargo were or
 should be disposed of at *Jamaica* to return
 pounds *per cent.* warranted to
 depart with convoy. And this deponent fur-
 ther saith, that the said ship, in the due prose-
 cution of her voyage for *London* was lost on
 the by means whereof,
 an average loss accrued on the said policy,
 which said average loss, the other underwriters
 on the day of adjusted
 and settled at *per cent.* by sub-
 scribing their names to an indorsement on the
 back of the said policy in the words and figures
 following, &c. And this deponent further saith,
 that

that the said *Peter Hasenclever* is indebted to this
examinant in the sum of _____ in re-
spect of the said loss so adjusted and settled at
_____ per cent. as aforesaid, for which said sum

George Hill. of _____ or any part thereof, this de-
ponent hath not had or received any security or
satisfaction whatsoever, save and except the said
policy.

Alexander Anderson.

On a Report in Chancery.

J. Bennet. *Samuel Wilson* of, &c. being sworn, &c. That
Peter Hasenclever the person, &c. was at and be-
fore the date and issuing forth of the said com-
mission, and still is justly and truly indebted
unto this deponent in the sum of _____

Robert Fawcett. reported due to him from the said *Peter Ha-*
senlever by *Peter Holford*, Esq. one of the Ma-
sters of the high Court of Chancery, as by his
report dated the _____ day of _____

George Hill. made in a cause depending in the said court,
wherein this deponent is complainant, and the
said *Peter Hasenclever* is defendant, may more
fully appear, for which said sum, &c.

Samuel Wilson.

*Memorandum of Bankrupt's Appearance at the second
Meeting, after having surrendered at the first.*

Guildhall, London, Aug. 3, 1769.

J. Bennet. Memorandum, that *Peter Hasenclever*, late
of *London*, but now of *Putney*, in the county of
Surry,

Surry, merchant (as having been one of the partners in trade with *Andrew Seton* and *Charles Crofts*, late of *London*, merchants), the person against whom this commission of bankrupt hath been awarded and issued forth, being sworn and examined before the major part of the commissioners in the said commission named and authorised the day and year above written, appeared again before the major part of the said commissioners, and submitted himself to be examined by the said commissioners present as to several matters relating to his said bankruptcy. But as he is not at present prepared to make a full and true disclosure and discovery of his estate and effects, desires further time for the doing thereof, till the next time appointed or to be appointed in the *London Gazette* for that purpose which is granted him accordingly.

*Robert
Fawcett.*

*George
Hill.*

Peter Hasenclever.

Memorandum in case the Bankrupt does not surrender.

At, &c.

Memorandum, That we the major part of the commissioners, named and authorised in and by a commission of bankrupt awarded and issued, and now in prosecution against *Peter Hasenclever*, of, &c. met the day and year, and at the place above-mentioned, pursuant to notice in the *London Gazette* for that purpose; but the said *Peter Hasenclever* did not surrender himself to us, or make any disclosure or discovery of his estate or effects, or send any excuse why he did not.

*J. Bennet,
Robert Fawcett,
George Hill.*

Memorandum

Memorandum of a Commissioner who had not before acted, qualifying himself to take the Oath.

At, &c.

J. Bennet. Memorandum, That I *Alexander Wedderburn*, Esq; being one of the commissioners named and authorised in and by a commission of bankrupt, awarded and issued against *Richard Enchmarch* and *Francis Enchmarch*, of *Tiverton*, in the county of *Devon*, merchants and partners, did on the day and year, and at the place abovesaid, take the oath of a commissioner of bankrupt, prescribed and specified in and by an act of parliament, made in the fifth year of the reign of his late majesty king *George* the second, intituled, "An act to prevent the committing of "frauds by bankrupts," before I proceeded in execution of the said commission in such manner as the said act directs.

Alex. Wedderburn.

Witness,

G. Ellis.

Provisional Assignment.

This Indenture, made the day of in the
year of the reign of our sovereign Lord *George* the
Third, by the grace of God, of *Great Britain, France and*
Ireland King, Defender of the Faith, and so forth, and in
the year of our Lord Between *William Bum-*
stead, Henry Hunter, and Henry Ruffel, Esqrs. the major
part of the commissioners named and authorised, in and by
a commission of bankrupt, awarded and issued against

of, &c. of the one part, and

of,

of, &c. Gent. of the other part. Whereas his majesty's commission under the Great Seal of *Great Britain*, grounded upon the several statutes made and now in force concerning bankrupts, bearing date at *Westminster*, the day of in the year of our Lord hath been awarded and issued against the said and directed to *William Bumpstead, Henry Hunter, Henry Ruffel, and Henry Cowper*, Esqrs. and *Richard Hargrave*, Gent. thereby giving full power and authority to the said commissioners, four or three of them to execute the same commission, as by the same commission relation being thereunto had, more fully and at large it doth and may appear.

And whereas, upon the execution of the said commission, it appeared to the major part of the commissioners in the said commission authorised, upon due examination of witnesses, and other sufficient proof upon oath, before them had and taken, that the said did from the month of carry on the trade and business of a merchant, exporting and importing divers kinds of goods, and did by such trade and business seek and endeavour to get his living, as other merchants usually do, and in the course of his said trading and dealing, he became indebted unto of, &c. in the sum of *l.* and upwards, for goods sold and delivered. And whereas the said did, in the judgment of the major part of the said commissioners, become bankrupt to all intents and purposes, within the compass, true intent and meaning of the several statutes made, and now in force concerning bankrupts, or within some or one of them, before the date and suing forth of the said commission, and they did adjudge and declare him bankrupt accordingly. And whereas the said commissioners, parties to these presents, in further execution of the

the said commission, and of the statutes therein mentioned, have also found out and discovered, or it otherwise appeared to them, that the said _____ at the time he became bankrupt, as aforesaid, or afterwards was possessed of, interested in, or well intitled unto sundry goods, wares, chattels, merchandizes, stock in trade, household stuff, implements of household, bedding, plate, linen, and other things, and that there were also divers debts, sum and sums of money due and owing unto him the said _____

and his estate from several persons: And whereas the said commissioners, parties hereto, think it necessary, for the better preserving and securing the estate of the said _____

to appoint an assignee provisionally of his estate and effects, until choice shall be made, by the major part in value of the creditors, of an assignee or assignees of the estate and effects of the said bankrupt, pursuant to notice to be given in the *London Gazette* for that purpose: Now this Indenture witnesseth, that the said commissioners, parties to these presents, for the purpose aforesaid, and in further execution of the said commission, and of the statutes therein mentioned, and by force and virtue thereof, and for and in consideration of the sum of 5 s. of lawful money of *Great Britain*, to them the said commissioners, parties to these presents, in hand paid by the said _____

at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, and also in consideration of the covenants herein after contained, on the part and behalf of the said _____ his

heirs, executors and administrators, to be kept, done, and performed, Do hereby appoint the said _____ assignee of the estate and effects of the said _____

and Have also ordered, bargained, sold, disposed, assigned and set over; And by these presents Do, as much as in them _____ the

the said commissioners, parties to these presents, lieth, and they lawfully may, order, bargain, sell, dispose, assign and set over, unto the said his executors, administrators and assigns, all and singular the goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, household stuff, and all implements of household, and other the personal estate whatsoever of the said of which he was possessed or intitled unto, or which any other person or persons was or were possessed, In trust for him at the time he became bankrupt, or at any time since; To have and to hold, ask, demand, sue for, recover, levy, and receive all and singular the premises thereby assigned or mentioned or intended so to be, unto the said his executors, administrators and assigns, In Trust for the immediate preservation thereof, and to and for the use, benefit and advantage of all the creditors of the said who have already sought, or shall hereafter, in due time, come in and seek relief under the said commission, according to the several statutes therein mentioned, or some or one of them, and to and for no other use, trust, intent or purpose whatsoever. And the said doth hereby for himself, his heirs, executors and administrators, and for every of them, covenant, promise and agree, to and with the said commissioners, parties to these presents, their executors and administrators, and to and with every of them, in manner and form following, (that is to say) That he the said his heirs, executors, or administrators, some or one of them, shall and will, as soon as an assignee or assignees of the said bankrupt's estate and effects shall be duly chosen and appointed, pursuant to notice in the *London Gazette*, and when he shall be thereunto required for that purpose, join with the major

major part of the commissioners named in the said commission in the making an assignment of all and singular the said goods, chattels, debts, sum and sums of money, wares and merchandizes, and all other the premises herein before mentioned or intended to be hereby assigned, unto such person or persons as shall be duly chosen and appointed to be the assignee or assignees of the said bankrupt's estate; and that he the said shall and will also deliver up all the estate and effects of the said bankrupt, as shall or may have come to the hands or possession of him the said or to the hands or possession of any other persons, in trust for him and for his use, unto such person or persons as shall be duly chosen assignee or assignees of the said bankrupt's estate and effects, or otherwise as the said commissioners shall direct or appoint.

And further that he the said his heirs, executors, and administrators, shall and will from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless, and indemnified, All the said commissioners in and by the said commission named and authorized, their heirs, executors and administrators, and every of them, their and every of their bodies, lands, tenements, goods, chattels, and estate whatsoever, of, from, and against all and all manner of action and actions, suits, arrests, complaints, costs, damages, and expences whatsoever which they or any of them shall or may sustain, or be put unto, for or by reason or means of this present deed of assignment, or any act or acts to be done or executed by him the said in pursuance, or by virtue of the said commission, or deed of assignment respectively. In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals, the day and year first above written.

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Memorandum of the Commissioners having made a provisional Assignment.

At, &c.

J. Bennet. Be it remembered that we *J. Bennet, Robert Fawcett, Esqrs. and John Hill, Gent.* the major part of the commissioners in a commission of bankrupt awarded and issued against *Richard Enchmarch and Francis Enchmarch, of Tiverton, in the county of Devon, merchants and partners, met at the time and place above-mentioned, and executed a provisional assignment of the said George bankrupt's estate and effects to Robert Brown, Hill, of Islington, in the County of Middlesex, Gent.*

The commissioners may, if they think it necessary, adjourn, in which case they make a memorandum thereof.

At, &c.

J. Bennet. Be it remembered, that we the major part of the commissioners named and authorised in and by a commission of bankrupt, awarded and issued against *Richard Enchmarch and Francis Enchmarch, of Tiverton, in the county of Devon, merchants and partners, met on the day and year, and at the place above-mentioned. And the petitioning creditors not being then prepared to prove the said Richard Enchmarch and Francis Enchmarch, bankrupts, desired further Robert time for that purpose. We therefore, at the Fawcett request of the said petitioning creditors, have adjourned to Monday, the 14th day of May next, at the Roll's Coffee-house, in Chancery-lane,*

London,

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George Hill. London, at five o'clock in the afternoon, to which time and place last mentioned, we have also issued our summons for the examination of witnesses, in order to prove the act of bankruptcy under the said commission.

Memorandum of the Commissioners having adjourned the making a Dividend.

At, &c.
J. Bennet. Be it remembered, that this being the day appointed by the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued against *Richard Enchmarch* and *Francis Enchmarch*, of *Tiverton*, in the county of *Devon*, merchants and partners, pursuant to notice in the *London Gazette*, for making a dividend of the estate and effects of the said bankrupts. We whose names are hereunto subscribed, being the major part of the said commissioners, met on the day and year, and at the place above-mentioned, in order to make the said dividend, but at the request of the assignees and creditors then present, We do adjourn the making of the said dividend of the said bankrupt's estate till further notice.

Letter of Attorney to vote in the Choice of Assignees.

Know all men by these presents, that I of, &c. one of the creditors of against whom a commission of bankrupt, under the Great Seal of Great Britain, hath been awarded and issued, Have made, ordained, constituted and appointed, and by these presents Do make, ordain, constitute, and appoint

of, &c. my true and lawful attorney for me, and in my name, place and stead, to appear before the commissioners in and by the said commission named and authorised or the major part of them, at *Guildhall, London*, or elsewhere, at the days and times appointed in the *London Gazette*, for the choice of assignees of the estate and effects of the said _____ and then and there for me, and in my name, to consent with whom the monies to be received from time to time amounting to the sum of 100*l.* or upwards, out of the said bankrupt's estate and effects, shall remain until the same be divided. And also for me, and in my name, to vote in the choice of one or more assignee or assignees of the said bankrupt's estate and effects, as my said attorney, as the commissioners and creditors then present shall think most fit and proper for the better management, getting in, recovering and securing of the said bankrupt's estate and effects. And also in case that I the said _____ should happen to be chosen assignee under the said commission at such meeting of the creditors of the said _____ then as my said attorney, and for me and in my name, to accept the said trust, and to execute a counter-part of the assignment to the commissioners; and further, to act, do and perform all and whatsoever shall be needful and requisite to be done, in, about, or concerning the premises. And I do hereby ratify, confirm and allow all, and whatsoever my said attorney shall lawfully do, or cause to be done for me, by virtue of these presents, and of the power and authority hereby to him by me given. In witness whereof, I the said _____ have hereunto set my hand and seal this _____ day of _____ in the _____ year of the reign of our sovereign Lord

Lord George the Third, &c. and in the year of our Lord

17

(L. S.)

Sealed and delivered

(being first duly stamped)

in the presence of

Affidavit of the Execution of the above Letter of Attorney.

T. H. of maketh oath that he was present and did see of, &c. duly sign, seal, and as his act and deed deliver the letter of attorney hereunto annexed, and that the name subscribed against the seal of the said Letter of Attorney is the own proper hand-writing of the said and that the names of this deponent and of

subscribed to the said Letter of Attorney as witnesses to the execution thereof, are of this deponent's and of the said own proper respective hand-writing.

Sworn at in the county of

the day of in the year

of our Lord before me

Master in Chancery extraordinary.

Jan. 16th, 1770.

Exhibited to us under Hasenclever's commission.

Robert Fawcett.

William Strong.

George Hill.

Memorandum of a Claim.

At. &c.

J. Bennet. Be it remembered that *A. B.* of, &c. the
Robert day and year, and at the place above-mentioned
Fawcett. claimed a debt of five hundred pounds, as due
 to *John Thompson*, laceman, from *Peter Hasen-*
Geo. Hill. clever, the said bankrupt. For *John Thompson.*

A. B.

Memorandum of the Choice of Assignees.

Guildhall, London, Aug. 3, 1769.

J. Bennet. Memorandum, This being the day appointed
 in the *London Gazette*, for the choice of assignees
 of the estate and effects of *Peter Hasenclever*,
 the person against whom this commission of
 bankrupt is awarded (as having been one of the
 partners in trade with *Andrew Seton* and *Charles*
Crofts, late of *London*, merchants). We whose
Robert names are hereunder written, being the major
Fawcett. part of the creditors of the said *Peter Hasenclever*
 present at this meeting, and who have proved
 our debts to be to *A.* and upwards, have
 chosen, and do hereby nominate and chuse
Andrew Devisme, *Miles Nibblingale*, *John Berens*,
Alexander Anderson, and *William Watlington*, all
 of *London*, merchants, to be assignees of the
 estate and effects of the said *Peter Hasenclever*.
 And we do hereby desire the commissioners to
 make

Appendix of Precedents.

ly

Geo. Hill. make an assignment thereof to them accordingly.

William Tutnal, for self and son.

Alexander Anderson, for self and Co.

William Watlington.

We accept of the said trust, and promise to execute a counter-part of the said assignment.

Alex. Anderson.

John Berens.

Wm. Watlington.

Andrew Devisme.

Miles Nightingale.

Another Memorandum of the Choice of Assignees, where some of the Creditors had empowered an Attorney to vote for them.

J. Bennet. Be it remembered, that this being the day appointed by the major part of the commissioners named and authorised in and by the commission of bankrupt, awarded and issued against *Richard Enchmarch*, and *Francis Enchmarch*, of *Tiverton*, in the county of *Devon*, merchants and partners, for the creditors of the said *Richard Enchmarch* and *Francis Enchmarch*, to meet and chuse assignees of the said bankrupt's estate and effects. We whose names are hereunto subscribed, being all the creditors of the said *Richard Enchmarch* and *Francis Ench-*

march,

March, here present, who have accordingly met, and have proved our several debts under the said commission, amounting respectively to 10*l*. and upwards, Do hereby nominate and chuse *George Prescott*, of London, merchant, &c. to be assignee of the said bankrupt's estate and effects, and desire the commissioners to make an assignment thereof accordingly to the said *George Prescott*, &c.

Witness our hands the day and year above written.

George Prescott.

Ell. Blackwell.

Nath. Price, attorney for several creditors at *Tiverton*,

We do agree to accept of this trust, and promise to execute a counter-part of the said assignment, as witness our hands, the day and year above said,

George Prescott.

Ell. Blackwell.

Robert Fawcett. I do undertake that *John Barley* and *Thomas Bridgood* shall accept the above trust, and execute a counter-part of the assignment to the commissioners.

Nath. Price.

Be it remembered, that before the above creditors of the said bankrupt, proceeded to the

the choice of the above assignees, the major part in value of the creditors present at such meeting did direct, that the monies arising by, and to be received, from time to time, out of the said bankrupt's estate, should from time to time, be paid in, and remain with Messrs. *Martin Stone and Blackewill*, bankers in *Lombard-street, London*, in the name of *George Prescott, &c.* until the same shall be divided among all the creditors of the said bankrupt. And the above creditors also agreed, that the assignees above-mentioned, do take in *James Matthias* of *London*, merchant, and *Mr. Charles Millan* of *London*, merchant, as assistants to them, in getting in, and collecting the said bankrupt's effects. And that they the said assignees, do make such allowances, and pay to them the said *James Matthias* and *Charles Millan*, such sums of money, for their care and trouble, as the said assignees shall think expedient and reasonable.

Memorandum of the Commissioners executing an Assignment.

At, &c.

J. Bennet.

Memorandum, that we whose names are hereunder written, being the major part of the commissioners named and authorised, in and by a commission of bankrupt, awarded against *Peter Hasenclever*, late of *London*, but now of *Putney*, in the county of *Surry*, merchant, (as having been one of the partners in trade with *Andrew Seton*, and *Charles Crofts*, late of *London*, merchants,)

Robert Fawcett,

chants,) met at the place and time above-mentioned, and executed an assignment of the said bankrupt's estate, and effects, to *Andrew Devisme, Miles Nightingale, John Berens, Alexander Anderson, and William Watlington* of London, merchants, the assignees appointed and *Geo. Hill* chosen by the creditors of the said bankrupt's estate and effects.

Assignment to Assignees after a provisional Assignment.

This Indenture tripartite made, &c. between
of, &c. Gent. of the first part
Esquire, and
Gentlemen, the major part of the
commissioners named and authorised, in and by a commission
of bankrupt, awarded and issued, and now in prosecution
against *of, &c. of the second*
part; *of, &c. and*
of, &c. of the third part. Whereas
his Majesty's commission, under the Great Seal of Great
Britain, grounded upon the several statutes made, and now
in force concerning bankrupts, bearing date at Westmin-
ster, the **day of** **in the year of our**
Lord **hath been awarded and issued against the**
said **and directed to**
Esquires
Gentlemen, thereby giving
full power and authority to the said commissioners, four
or three of them, to execute the same commission, as by
the same commission, relation being thereunto had, more
fully and at large, it doth and may appear. And whereas
upon the execution of the said commission, it appeared to
the

the major part of the commissioners in the said commission authorised, upon due examination of witnesses, and other sufficient proof upon oath, that the said

did, from the month of _____ carry on the trade and business of a merchant, by exporting and importing divers kinds of goods, and did by such trade and business, seek and endeavour to get his living as other merchants usually do; and, in the course of his said trading, and dealing, he became indebted unto

of, &c. in the sum of 100*l.* and upwards, for goods sold and delivered. And whereas the said

did, in the judgment of the major part of the said commissioners, become bankrupt to all intents and purposes, within the compass, true intent and meaning of the several statutes made, and now in force concerning bankrupts, or within some or one of them, before the date and suing forth of the said commission, and they did adjudge and declare him bankrupt accordingly. And whereas the said commissioners, parties to these presents, in further execution of the said commission, and of the statutes therein mentioned, and by virtue of the same, by indenture bearing date the _____ day of _____

and made or mentioned to be made between the said _____

of the one part, and the said _____ of the other part, reciting as herein before recited. And also reciting, that the said commissioners, parties thereto, in further execution of the said commission, and of the statutes therein mentioned, had also found out and discovered, or it otherwise appeared to them, that the said _____ at the time he became bankrupt as aforesaid, or afterwards, was possessed of, interested in, or well intitled unto sundry goods, wares, chattels, merchandizes, stock in trade, household-stuff,

stuff, implements of household, bedding, plate, linen, and other things; and that there were also divers debts, sum and sums of money due and owing unto the said

and his estate, from several persons.

And also further reciting, that the said commissioners, parties thereto, thought it necessary for the better preserving and securing the estate of the said

to appoint an assignee provisionally of his estate and effects, until choice should be made by the major part in value of the creditors, of an assignee or assignees of the estate and effects of the said bankrupt pursuant to notice to be given in the *London Gazette* for that purpose.

It was witnessed, that the said commissioners, parties thereto, for the consideration therein mentioned, Did thereby appoint the said assignee of the estate and effects of the said

and did also, as much as in them lay, and they lawfully might order, bargain, and sell, dispose, assign and let over unto the said

his executors, administrators and assigns, all and singular, the goods, wares and merchandizes, chattels, stock in trade, debts, sum and sums of money, and all other the personal estate whatsoever of the said

of which he was possessed or intitled unto, or which any other person or persons was or were possessed in trust for him at the time he became bankrupt, or at any time since, To hold, ask, demand, sue for, recover, levy, and receive all and singular the premises thereby assigned, or mentioned, or intended so to be, unto the said

his executors, administrators or assigns; In Trust for the immediate preservation thereof, and to and for the use, benefit, and advantage of all the creditors of the said

who had then sought, or should then after,
In

in due time come in and seek relief under the said commission, according to the several statutes therein mentioned, or some or one of them, and to, and for no other use, trust, intent or purpose whatsoever, as in and by the said recited indenture, relation being thereunto had, will, and may more fully and at large appear. And whereas the said

did in and by the said recited indenture of assignment, covenant and agree, to and with the said commissioners, parties thereto, their executors and administrators, and to and with every of them, that he the said

his executors or administrators, or some or one of them, should or would, as soon as an assignee or assignees of the estate and effects of the said bankrupt should be duly chosen and appointed, join with the major part of the commissioners authorised by the said commission, in assigning all and singular the said goods, chattels, debts, sum and sums of money, wares and merchandizes, and all other the premises, in the said recited indenture assigned to him, unto such person or persons as should be duly chosen and appointed to be the assignee or assignees of the estate and effects of the said bankrupt. And that he the said

would deliver up all the estate and effects of the said bankrupt as should or might have come to his hands or possession, or to the hands or possession of any other person or persons, as should be duly chosen assignee or assignees of the estate and effects of the said bankrupt, or otherwise, as the said commissioners should direct or appoint, as in and by the said recited indenture may more fully and at large appear.

And whereas, at a meeting of the major part of the commissioners, in and by the said commission named and authorised, at the *Guildhall* of the city of *London*, this day of

pursuant to notice in the

London

London Gazette, for that purpose given, the major part in value of the creditors of the said
then present, and who had proved their debts under the said commission, and whose debts respectively amounted to 10*l* or upwards, did nominate, elect, and chuse the said
to be assignees of the estate and effects of the said
and desired an assignment thereof to be made to them accordingly, by the said
and the said commissioners. Now this indenture witnesseth, that the said
for, and in consideration of the sum of 10*l* of lawful money, of *Great Britain*, to him in hand paid by the said
at or before the sealing and delivering of these presents, in pursuance of the above mentioned covenant, in the above recited indenture mentioned, by the consent and direction of the said commissioners, parties to these presents, testified by their being parties to, and sealing and delivering hereof, Hath ordered, bargained, sold, disposed, assigned and set over, and by these presents, Doth order, bargain, sell, dispose, assign and set over unto the said
their executors and administrators, all and singular the goods, wares and chattels, debts, sum and sums of money, and all other the personal estate whatsoever of the said
of which he was possessed or intitled unto, or which any other person or persons was or were possessed in trust for him at the time he became bankrupt, or at any time since. And all the right, title, interest, property, claim and demand whatsoever, of him the said
of, in, or to the same, or any part thereof, as assignee of the estate and effects of the said
And the said

com-

commissioners, parties to these presents, being the major part of the said commissioners, in and by the said commission named and authorised, in consideration of 5 s. to them or one of them, in hand also paid by the said

Have ratified and confirmed, and by these presents do, as much as in them lieth, and they lawfully may, ratify and confirm unto the said all and singular the said goods, wares, and chattels, debts, sum and sums of money, and other things, and all the estate whatsoever, and where-soever, of, or belonging to the said herein before ordered, bargained, sold, disposed, assigned and set over by the said party hereto,

To have and to hold, ask, demand, sue for, recover, levy and receive the said goods, wares, and chattels, debts, sum and sums of money, and other things, and all other the effects whatsoever, of, or belonging to the said

hereby ordered, bargained, sold, disposed, assigned and set over, or hereby mentioned or intended to be, unto the said

their executors, administrators and assigns. Upon trust nevertheless (that is to say) to and for the use, benefit and advantage of all the creditors of the said

who have already sought, or shall hereafter in due time come in and seek relief by virtue of the said commission according to the limitations and directions of the several statutes in that behalf made and provided, and to and for no other use, intent or purpose whatsoever. And the said do

for themselves severally and respectively, and for their several and respective heirs, executors, and administrators, and not the one for the other of them, or for his act or deed,

deed, but each for himself separately, and for his own separate act and deed only, covenant, promise and agree, to, and with the said commissioners, parties to these presents and to and with every of them by these presents that they the said

their executors, administrators and assigns, shall and will, with all convenient speed, by all lawful and equitable ways and means, use their utmost endeavours to recover and get in the several goods, wares, and chattels, debts, sum and sums of money, and all the estate and effects of the said

and after possession had, and obtained, of the said goods, wares, and chattels, debts, sum and sums of money, estates and effects whatsoever, or any part thereof, shall and will, sell and dispose of the same, to and for the most money, and best price they can get for the same.

And further that the said

their executors, administrators and assigns, shall and will, from time to time, and at all times hereafter, upon reasonable request or notice to them given for that purpose, render and give unto the said commissioners, parties to these presents, or the major part of the said commissioners in and by the said commission named and authorised, and the major part of the commissioners to be named in and by any renewed commission, which may be awarded against the said

at such time and place as they shall appoint, a true, just and perfect account in writing under the hands of the said

their executors, and administrators, of what, and how much money and other satisfaction, they the said

their executors or administrators, shall have had, recovered and received by virtue

virtue or means of this present deed of assignment or otherwise out of the estate and effects of the said ~~debtor~~ and such money or other satisfaction, as upon such account shall appear to be had, raised, and received, by the said ~~debtor~~ their executors or administrators, they the said ~~debtor~~ their executors or administrators shall and will well and truly pay, or cause to be paid, unto them the said commissioners, parties to these presents, or the major part of the said commissioners in and by the said commission named, or to the commissioners to be named in any such renewed commission, or the major part of them, or to such person or persons as they shall appoint, to the end the same or other satisfaction may be by them the said commissioners in and by the said commission named and authorised, or the major part of them, ordered, disposed, distributed, and divided unto and amongst all and every the creditors of the said ~~debtor~~ who have already sought, or shall hereafter in due time come in and seek relief by virtue of the said commission, according to the limitations and directions of the several statutes therein mentioned, proportionably, according to the several debts owing to them severally and respectively, from the said ~~debtor~~. And lastly, the said ~~debtor~~ do hereby for themselves, severally and respectively, and for their several and respective heirs, executors, and administrators, and not the one for the other of them, or for his act or deed, but each for himself separately, and for his own separate act and deed only, covenant, promise, and agree to and with the said commissioners, parties to these presents, and to and with every of them, their heirs, executors, and administrators, that they the

* E

said

said

their executors and administrators, shall and will, from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified the said commissioners, in and by the said commission named and authorized, or in and by any renewed commission to be named and authorized; and also the said (the person to whom the provisional assignment was made) their messengers, agents, servants, executors, and administrators, and every of them, their and every of their bodies, lands, tenements, goods, and chattels of, touching or concerning all and all manner of action and actions, suits, arrests, troubles, costs, damages, and expences whatsoever, which they or any of them shall sustain or be put unto, for or by reason of this present deed of assignment, or any other act or acts, thing or things, lawfully done or executed by virtue of the said commission, or the said recited assignment, or their or any of their lawful intermeddling in any of the estate or effects of the said

In witness, &c.

Assignment of a Bankrupt's Estate and Effects from the Commissioners to the Assignees.

This Indenture made, &c. between *Thomas Coventry, Esquire, James Mead, and John Grubb, Gentlemen*, the major part of the commissioners named, authorized, and appointed in and by a certain commission of bankrupt, awarded and issued out against *John Thomas, late of Bury in the county of Suffolk, shopkeeper, grocer and chapman, of the one part, and Thomas Hopkins of, &c. grocer, and Robert Simpson of &c. warehousleman, of the other part.*

Whereas

Whereas his Majesty's commissioners, under the great seal of Great Britain, grounded upon the several statutes made and now in force concerning bankrupts, bearing date at Westminster the 8th day of, &c. before the date of these presents, hath been awarded and issued against the said John Thomas, directed to the said Thomas Coventry, Esquire, James Mead, and John Grubb, Gentlemen, together with Joseph Simpson and John Saley the younger, Esquires, thereby giving full power and authority unto them the said commissioners, four or three of them, to execute the same, as in and by the said commission, relation being thereunto had may more fully and at large appear. And whereas the major part of the said commissioners have duly qualified themselves to act in the said commission by taking the oath required for that purpose; and having begun to put the said commission into execution, upon due examination of witnesses, and other good proof upon oath before them taken, have found that the said John Thomas did, for three years and upwards last past before the date and suing forth of the said commission, carry on and follow the trade and business of a grocer and shopkeeper; and during all such time did seek and endeavour to get his living by buying of tea, sugars, and other grocery goods, woollen and linen cloth, clover seed, and other commodities, and selling the same again, as others of the same trade are used to do. And that the said John Thomas, so seeking and endeavouring to get his living by buying and selling, became indebted unto the said Thomas Hopkins in the sum of 200 l. of, &c. and being so indebted as aforesaid, did before the date and suing forth of the said commission, in the judgment of the major part of the said commissioners, become a bankrupt to all intents and purposes within the true intent and meaning of the several statutes in the said commission named, or within

some or one of them, and was by them declared a bankrupt accordingly. And whereas, on the day of the date of these presents, being the day appointed according to the notice in the *London Gazette* for the choice of an assignee or assignees of the said bankrupt's estate and effects, at *Guild-Hall, London*, the major part in value of the creditors of the said *John Thomas* then present, whose debts amounted to the sum of 10*l.* and upwards respectively, did choose the said *Thomas Hopkins* and *R. Simpson* to be assignees of the estate and effects of the said *John Thomas*. Now this Indenture witnesseth, that the said commissioners, parties to these presents, in further execution of the said commission, and by force and virtue thereof, and of the said statutes therein mentioned, and for and in consideration of the sum of 5*s.* of, &c. to them the said commissioners, parties to these presents, in hand paid by the said *Thomas Hopkins* and *Robert Simpson*, at and before the sealing and delivery of these presents, (the receipt whereof is hereby acknowledged) and also for and in consideration of the covenants herein after contained, on the part and behalf of the said *Thomas Hopkins* and *Robert Simpson*, their executors and administrators, to be kept, done and performed, and to and for the uses, intents and purposes herein after mentioned and expressed, have ordered, disposed, bargained, sold, assigned, transferred and set over, and by these presents (as much as in them the said commissioners, parties to these presents lyeth, and they lawfully may) do order, dispose, bargain, sell, assign, transfer, and set over unto the said *Thomas Hopkins* and *Robert Simpson*, their executors, administrators, and assigns, all and singular the goods, chattels, wares and merchandizes, effects, debts, sum and sums of money, and all other personal estate whatsoever, whereby, wherein and whereunto the said *John Thomas* was possessed of, interested in, or intitled unto,

at

at the time he became a bankrupt, or at any time since; and all the estate, right, title, interest, equity of redemption, property, claim, and demand whatsoever of him the said *John Thomas*, of, in, or to the premises, or any part thereof: To have and to hold, receive and take, the said goods, chattels, wares and merchandizes, debts, sum and sums of money, and effects, and all and singular other the premises herein before ordered, disposed, bargained, sold, assigned, transferred and set over, or mentioned or intended hereby so to be, and every part and parcel thereof, unto the said *Thomas Hopkins* and *Robert Simpson*, their executors, administrators, and assigns, from henceforth as his and their own proper goods and chattels for ever; In trust, nevertheless, to and for the use, benefit, and advantage of the said *Thomas Hopkins* and *Robert Simpson*, and all such other of the creditors of the said *John Thomas*, as have already sought, or shall hereafter in due time come in as creditors and seek relief by virtue of the said commission, according to the limitations and directions of the several statutes in that behalf made and provided, and to and for no other use, intent or purpose whatsoever. And the said *Thomas Hopkins* and *Robert Simpson*, for themselves, their executors, and administrators, do covenant, promise, and agree to and with the said commissioners, parties to these presents, their executors and administrators, and each and every of them, by these presents, in manner following, that is to say, that they the said *Thomas Hopkins* and *Robert Simpson*, their executors, administrators and assigns, shall and will with all convenient speed, use their utmost and best endeavours and means to recover, and get into their hands, all and singular the goods, chattels, wares and merchandizes, debts, and effects, whatsoever and wheresoever, of or belonging to the said *John Thomas*, mentioned or intended to be hereby assigned; and

after possession or recovery thereof had and obtained, shall and will with the like convenient speed, make sale and disposition of the same, for the most and best price they may or can get for the same, at the time of such sale; and also shall and will use their utmost endeavours to recover, receive and get in, all and every the debts, sum and sums of money, due and owing to the said *John Thomas*, or his estate. And further, that they the said *Thomas Hopkins* and *Robert Simpson*, their executors and administrators, shall and will give from time to time, and at all times hereafter, upon every reasonable request, and notice in writing to them, any or either of them given, for that purpose by the major part of the commissioners by the said commission authorised as aforesaid, a just and true account in writing of all and every such sum and sums of money, or other satisfaction as they the said *Thomas Hopkins* and *Robert Simpson*, their executors and administrators, shall have then received, obtained, and raised, by force, virtue or means of this present deed of assignment, or otherwise, out of the estate of the said *John Thomas*; and all such monies and other satisfaction as upon every such account shall appear to be raised, obtained and received by them the said *Thomas Hopkins* and *Robert Simpson*, their executors and administrators, they the said *Thomas Hopkins* and *Robert Simpson*, their executors and administrators, shall and will well and truly pay, or cause to be paid, unto the said commissioners, parties to these presents, or to the major part of the commissioners by the said commission named or authorised, or in any renewed commission against the said *John Thomas* to be named and authorised, or to such person or persons as they shall direct or appoint, to the end the same may be by them ordered, disposed, distributed, and divided unto and amongst all and every of the creditors of the said *John Thomas*, who have already fought, or

shall

shall hereafter in due time come in and seek relief by virtue of the said commission, according to the statutes in that case made and provided; and in the mean time, until such dividend or dividends shall be made as aforesaid, that they the said *Thomas Hopkins* and *Robert Simpson*, shall and will, from time to time, as and when the money to be received by them, or either of them, from or out of the said bankrupt's estate and effects, shall amount to the sum of 100 £. or upwards, pay the same in the joint names of the said assignees into the hands of Messrs. *A. B. C. D. &c.* bankers in *London*, for safe custody, there to remain for the benefit of his creditors, and subject to the order of the said commissioners, or the major part of them. And the said *Thomas Hopkins* and *Robert Simpson*, for themselves, their executors and administrators, do hereby further covenant, promise and agree to and with the said commissioners, parties to these presents, and every of them, their and every of their executors and administrators, that they the said *Thomas Hopkins* and *Robert Simpson*, their heirs, executors, and administrators, shall and will, from time to time, and at all times hereafter, well and sufficiently save, defend, and keep harmless and indemnified, all the said commissioners in the said commission named, or in any renewed commission to be named and authorised, and every of them, their and every of their heirs, executors and administrators, secretary, messengers and servants, and their and every of their lands and tenements, goods and chattels, of and from all and all manner of action and actions, suits, costs, and damages whatsoever, which shall or may be commenced, sued, or prosecuted against them, or any of them, or which they or any of them shall or may bear, pay, or be put unto, for or by reason of this present deed of assignment, or any other act or acts, thing or things whatsoever, by them or any of them lawfully

acted or done, or to be lawfully acted or done by virtue of the said commission, or their, or any, or either of their law-ful intermeddling in any of the estate and effects of the said *John Thomas*, by virtue or colour thereof.

In witness, &c.

*Bargain and Sale of a Bankrupt's Freehold and Copy-
hold Estates, from Commissioners to Assignees.*

This Indenture made, &c. between *William Bumpstead*, *Henry Hunter*, and *Henry Russell*, Esquires, of the one part, and *Thomas Hopkins*, of, &c. and *Robert Simpson*, of, &c. Gentlemen. Whereas his Majesty's commission, under the great seal of *Great Britain*, grounded upon the several statutes made and now in force concerning bankrupts, bearing date at *Westminster* the 7th day of *June*, in the first year of his present Majesty's reign, hath been awarded and issued against *John Thomas*, of, &c. directed to the said *William Bumpstead*, *Henry Hunter*, and *Henry Russell*, Esquires, together with *H. Cowper*, Esquire, and *R. Hargrave*, Gentleman, thereby giving to the said commissioners, four or three of them, full power and authority to execute the same, as in and by the said commission, relation being thereunto had, may more fully and at large appear. And whereas the major part of the said commissioners, in and by the said commission named and authorised, having begun to put the said commission in execution, upon due examination of witnesses, and other good proof before them upon oath taken, have found that the said *John Thomas* did, for several years last past before the date and suing forth of the said commission, follow the trade and business of a shopkeeper, and during

ring all such time did seek and endeavour to get his living by buying of tea, sugars, and other grocery goods, linen cloth, and other commodities, and selling the same again, as others of the same trade are used to do; and that during such his trade and business, the said *John Thomas* did become indebted unto the said *Thomas Hopkins* in the sum of 100 l. and upwards, of, &c. and being so indebted, he the said *John Thomas*, in the judgment of the major part of the commissioners named and authorised in and by the said commission, became a bankrupt, within the compass, true intent, and meaning of the several statutes made and now in force concerning bankrupts, or one of them, before the date and suing forth of the said commission, and was declared a bankrupt accordingly. And whereas the said commissioners, in pursuance of the act of parliament made in the 5th year of the reign of his late Majesty King *George the Second*, did cause due notice to be given and published in the *London Gazette*, for the creditors of the said *John Thomas* to meet at *Guild Hall, London*, on the 1st day of *June* in the year last mentioned, in order to choose an assignee or assignees of the said *John Thomas's* estate and effects; and the major part in value of the creditors of the said *John Thomas*, who had duly proved their debts under the said commission, and whose respective debts amounted to 10 l. and upwards, then present, did then and there nominate, elect and choose the said *Thomas Hopkins* and *Robert Simpson*, to be assignees of the estate and effects of the said *John Thomas*, and desired the commissioners to make an assignment thereof to them accordingly. And the said commissioners did accordingly order, bargain, sell, assign, and set over all the personal estate and effects of the said *John Thomas*, unto the said *Thomas Hopkins* and *Robert Simpson*, in trust, for themselves and all such other of the creditors of the said *John Thomas*, who should

should be entitled to the benefit and advantage of the said estate and effects, as in and by the said assignment is mentioned. And whereas the said commissioners, parties to these presents, in further execution of the said commission, do find that the said *John Thomas*, at the time he became a bankrupt, and before the date and suing forth of the said commission, was seised to him and his heirs, or was otherwise interested in and intituled unto, all that freehold messuage or tenement, &c. [take your description from the title deeds] then or late in the occupation of, &c. and do further find, that the said *John Thomas* was also seised to him and his heirs, or was otherwise interested in and intituled unto, one copyhold or customary messuage or tenement, &c. held of the manor of, &c. [take your description from the bankrupt's admission] situate, &c. and now or late in the tenure or occupation of, &c. Now this Indenture witnesseth, that the said commissioners, parties to these presents, in further execution of the said commission, and by force and virtue of the same, and of the statutes therein mentioned, and for and in consideration of the sum of 5 s. of, &c. to them in hand well and truly paid by the said *Thomas Hopkins* and *Robert Simpson*, at and before the enfealing and delivery of these presents, the receipt whereof is hereby acknowledged; and also for and in consideration of the covenants and agreements herein after reserved and contained, on the part and behalf of the said *Thomas Hopkins* and *Robert Simpson*, their heirs, executors and administrators, to be observed and performed, have granted, bargained, sold, assigned, and set over, and by these presents do (as much as in them lieth, and they lawfully may) grant, bargain, sell, assign, and set over unto the said *Thomas Hopkins* and *Robert Simpson*, their heirs and assigns, all and singular the said freehold and copyhold messuages, &c. herein before mentioned

tioned and described, with their and every of their appurtenances, and every part and parcel thereof, together with all ways, paths, passages, waters, water courses, lights, easements, hedges, ditches, gates, stiles, fences, profits, commodities, privileges, and hereditaments whatsoever, to the said messuages or tenements, lands and premises belonging, or in any wise appertaining, or accepted, reputed, taken, used, occupied or enjoyed, as part, parcel, or member thereof; and also all other the freehold and copyhold messuages, lands, tenements and hereditaments, situate, lying and being in the said county of _____ or elsewhere, whereof, wherein, or whereunto he the said *John Thomas*, at the time he became a bankrupt, or at any time since, had any estate, right, title or interest, in possession, reversion, remainder or expectancy, or otherwise howsoever, with their and every of their appurtenances, and all the estate, right, title, interest, use, trust, property, benefit, power, equity of redemption, claim and demand whatsoever, both in law and equity, of him the said *John Thomas*, or of them the said commissioners, by virtue of the said commission, of, in and to the same premises, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every or any part and parcel thereof, together with all deeds, evidences and writings, touching and concerning the same, or any part or parcel thereof; To have and to hold the said freehold and copyhold messuages, &c. and all and singular other the premises herein before mentioned, and intended to be hereby granted, bargained, sold and assigned, with their and every of their appurtenances, unto the said *Thomas Hopkins* and *Robert Simpson*, their heirs and assigns, for ever, to the use of them the said *Thomas Hopkins* and *Robert Simpson*, their heirs and assigns, for ever, (subject to such mortgage or mortgages, or other charges and incumbrances,

brances, if any such there be) as the same premises are. In trust nevertheless, and to and for the several uses of them the said *Thomas Hopkins* and *Robert Simpson*, and all such other the creditors of the said *John Thomas*, who have already sought, or shall hereafter in due time come in and seek relief by virtue of the said commission, and to and for no other use, trust, intent or purpose whatsoever. And the said *Thomas Hopkins* and *Robert Simpson* do hereby for themselves severally, and not the one for the other of them, and for their several heirs, executors, and administrators, covenant, promise, and agree to and with the said commissioners, parties to these presents, and to and with every and each of them, their executors and administrators, by these presents, in manner following; that is to say, that each of them the said *Thomas Hopkins* and *Robert Simpson*, and their heirs, shall and will, with all convenient speed, use his and their best means and endeavours, by suit at law or otherwise, to enter upon and get possession of all and singular the herein before bargained, sold, and assigned premises, and after such possession had and obtained, with like convenient speed to make sale and disposition thereof, and accordingly sell and dispose of the same to and for the best value, profit, and advantage that he or they can get. And further that each of them, the said *Thomas Hopkins* and *Robert Simpson*, their heirs, executors, and administrators, shall and will, from time to time, and at all times hereafter, upon reasonable notice, render and give unto the major part of the commissioners, by the said commission named and authorised to take the same, at such time as they shall appoint, a true, just, fair and perfect account, in writing, under the hands of them the said *Thomas Hopkins* and *Robert Simpson*, their heirs, executors, or administrators, of how much money or other satisfaction, they the said *Thomas Hopkins* and

and *Robert Simpson*, their heirs, executors or administrators, shall have received or recovered by virtue or means of this present deed of bargain and sale, or assignment, or otherwise, out of the estate and effects of the said *John Thomas*; and all such money and other satisfaction, as upon every such account shall appear to have been had and received by the said *Thomas Hopkins* and *Robert Simpson*, or either of them, their heirs, executors, or administrators respectively, shall and will duly pay, or cause to be paid, unto the major part of the said commissioners, by the said commission authorised, or to such person or persons as they shall appoint to receive the same. To the end the said monies may be, by such commissioners as aforesaid, or the major part of them, ordered, disposed, distributed, and divided, unto and amongst all and every the creditors of the said *John Thomas*, who have already sought, or shall hereafter in due time come in and seek relief by virtue of the said commission, according to the directions of the several statutes in that case made and provided. And lastly, that they the said *Thomas Hopkins* and *Robert Simpson*, their executors, and administrators, shall and will from time to time, and at all times hereafter, save, defend, keep harmless, and indemnified, all and every the said commissioners, in the said commission named as aforesaid, their executors and administrators, agents and servants, and every of them, their and every of their goods and chattels, lands and tenements, of, from, touching and concerning, all and all manner of actions, suits, costs, damages, and expences whatsoever, which shall or may arise or happen, or which they the said commissioners, or any of them, their or any of their heirs, executors, or administrators, agents or servants, shall or may sustain, bear, pay, or be put unto, for or by reason of this present deed of bargain and sale or assignment, or any other
act

act or thing whatsoever, by them or any of them lawfully acted or done, or to be acted or done by virtue of the said commission, or by reason of their or any of their lawful intermeddling in any of the estate of the said *John Thomas*.

In witness, &c.

The bargain and sale, after it has been executed by the commissioners, must be inrolled in some court of record at *Westminster*, within six months after the date of the deed.

The courts of record in which it may be inrolled, are the Chancery, King's Bench, Common Pleas, and Exchequer.

In the Court of Chancery.

If it is to be inrolled in *Chancery*, one of the commissioners who executed the bargain and sale must acknowledge it before a master, either at the public office in *Symond's Inn*, *Chancery-lane*, or at the master's house; but if a commissioner cannot attend, then one of the witnesses must make an affidavit of the due execution of the deed, which must be annexed. In this court a *fiat* is never granted.

When the same is acknowledged, the acknowledgement thereof must be wrote at the bottom, or on the margin of the deed, in this form:

This indenture was acknowledged by *Thomas Nugent*, Esquire, therein mentioned, who prayed that the same might be inrolled, on the 4th day of *June*, 1780, before

Thomas Anguish.

This acknowledgment must be signed by the master, and then the deed must be engrossed on rolls of the court.

When

Appendix of Precedents.

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When acknowledged, you take the deed to the clerk of the inrolments, whose office is in the Chancery-office in *Chancery-lane*; he provides rolls and inrols the deed, without giving you any trouble, except taking the deed to and from the office when inrolled, and the certificate indorsed thereon.

Fees of Inrolment.

	Officer's charge.	Solicitor's charge.
Acknowledging	0 2 6	0 2 6
Swearing affidavit	0 1 6	0 1 6
Inrolling for each roll or press, containing 90 lines, and each line 14 words	0 10 0	0 10 0
Indorsing and certifying	0 5 4	0 5 4

Besides a fee of half a guinea to the commissioner who acknowledged the deed, and the charge of drawing and engrossing the affidavit, in case no commissioner can attend; but the solicitor can charge nothing more than his own attendances, the full fees of inrolment being paid at the office.

In the King's Bench.

If you intend to inrol the deed in this court, one of the commissioners must acknowledge it either in court, or before a judge at his chambers; the deed must be left with the judge, who with his own hand delivers it in open court to the secondary (*i. e.* the master) and desires him to inrol it; if in term time, the deed may be got immediately, but if in vacation, it must remain with the judge till the following term; when you get the deed, call for as many rolls as you want,

want, at the clerk of the dockets in the King's Bench office, or from the stationer. You pay four-pence for each roll, which is allowed you again on carrying in the rolls, and when you have engrossed the deed on the roll, prefixing such one of the following preambles, as may suit the acknowledgment, you docket the rolls with the clerk of the dockets, who will indorse the number roll upon the deed; but if the deed happens to be of a prior term, then call at Mr. Way's, Portugal-street, Lincoln's-Inn-Fields, for the number roll.

You must take with you to the clerk of the dockets, the deed, and the rolls, and also a docket upon a slip of paper to the following effect, viz.

Mich. term, in the twentieth year of the reign of King George the Third.

Entries of John Knight, gentleman, one of the attornies, &c.

An indenture dated, &c. between William Bumpstead, Henry Hunter, and Henry Russel, Esquires, of the one part, and Thomas Hopkins, of, &c. and Robert Simpson, of, &c. of the other part. Roll.

This officer also indorses a certificate on the deed, which done, he returns it.

The Preamble of the Inrolment of a Deed, when the same is acknowledged in court.

*As yet of Easter term (as the term shall be)
Witness William, Earl Mansfield.*

England,

Be it remembered, that on *Wednesday*
England, to wit. { next after 15 days of *Easter* in this same
 term, before our Lord the King at
Westminster, came *Henry Hunter*, Esquire, in his proper per-
 son, and brought here into the court of our said Lord the King,
 then there, a certain indenture, which he acknowledged to
 be his deed, and prayed that the same indenture, as his deed,
 might be inrolled of record, before our said Lord the King
 at *Westminster*; and it is inrolled in the following words:
 To wit, this indenture, &c. (the deed *verbatim*.)

*The Preamble where the Indenture is acknowledged
 before the Chief Justice at his Chambers.*

Be it remembered, that on, &c. in this
England, to wit. { same term, before our Lord the King at
Westminster, *William earl Mansfield*, chief
 justice of our said Lord the King, assigned to hold pleas be-
 fore the King himself, records, that on the 4th day of *June*
 last past, *Henry Hunter*, Esquire, in his own proper person,
 came before the said chief justice, at his chambers, situate
 in *Serjeant's Inn* in *Chuncery-lane*, and brought before the
 said chief justice, then there, a certain indenture, which he
 acknowledged to be his deed, and prayed that the said in-
 denture, as his deed, might be inrolled of record in the
 court of our said Lord the King, before the King himself at
Westminster; and which said indenture the aforesaid chief
 justice, by his own proper hands, now delivers here into
 court, to be inrolled in form aforesaid; and it is inrolled in
 the following words, to wit: This indenture, &c. and go
 on *verbatim* with the deed, copying every word, with the
 names of the parties signing, and making this mark (L. S.)

for the seals, then the attestations, receipts, and all other indorsements; and lastly examine the inrolment with the deed.

The certificate to be indorsed on the deed inrolled.

William Bumpstead, Esquire, and others, to *Thomas Hopkins* and *Robert Simpson*.

Inrolled in the court of our Lord the King, before the King himself at *Westminster*, of *Mich.* term (as the term is) in the twentieth year of the reign of our sovereign Lord *George the Third*, King of *Great Britain*, &c. Roll.

Fees of Inrolment.

	Officer's charge.	Attorney's charge.
Acknowledging in court	0 3 0	0 3 0
Before a judge at his chambers	0 8 8	0 8 8
Inrolling each sheet	0 0 3	0 0 8
Docketing and carrying in rolls	0 3 6	0 3 6

Besides the commissioner's fee for acknowledging; the charge of drawing and engrossing the affidavit, if necessary, and attendances.

In the Common Pleas.

If the deed is to be inrolled in *C. B.* you carry the deed to a judge, either at his chambers or at his house; or, if in term time, it may be done at *Westminster Hall*; one of the commissioners must attend and acknowledge it; the acknowledgment (the officer's warrant for inrolling the deed)

deed) is wrote on the margin of the deed, generally by the judge's clerk. The form of the acknowledgment is,

(The execution of this deed was acknowledged (in court) by *H. H.* (the commissioner acknowledging) party thereto, this 4th day of *May*, 1780, before *H. G.* (the name of the judge).)

The deed being properly acknowledged, get the rolls from (the clerk of the warrants of attorney, whose office is in *Pump Court, Inner Temple*, for which you do not pay any thing, and having engrossed them yourself, and left a space for prefixing the preamble, which is done by you, by the clerk of the warrant's dictating, for which purpose you carry him the deed and rolls, who will indorse, docket, and inrol the deed immediately, for it is not necessary in this court, as in the King's Bench; for the attorney to indorse the deed, or carry in any docket, the clerk of the warrant being obliged to do all himself, and also, if desired, to engross the deed upon the rolls, which is begun in this form:

H. H. (the commissioner acknowledging) came into his Majesty's court of Common Pleas at *Westminster*, (if the deed was acknowledged in court) the 10th day of *June*, in this same term, before Sir *H. Gould*, knight, (the name of the judge before whom the acknowledgment happens to be taken, if the deed be not acknowledged in court) and acknowledged this writing following to be his deed, and required the same to be inrolled, and it is inrolled in these words: to wit, This indenture, &c. and so go on with the deed, copying every word, the names of the parties signing, making this mark (*L. S.*) for a seal, and the attestation, receipt, and all indorsements, and last of all examine the inrolment by the deed.

Fees of Inrolment.

	Officer's charge.	Attorney's charge.
Acknowledging in court	0 1 0	0 1 0
Before a judge at chambers	0 5 0	0 5 0
Inrolling each sheet	0 0 3	0 0 8
Docketing and certificate	0 1 0	0 3 4

Besides the commissioner's fee, the affidavit, and common attendances.

In the Exchequer.

One of the commissioners must attend and acknowledge the bargain and sale in court: this acknowledgment is the clerk in court's warrant for inrolling the deed, which is wrote on the margin thereof, generally by the baron's clerk, the form of which is as follows:

The execution of this deed was acknowledged in court by *Henry Hunter*, Esquire, party thereto, the 14th day of April, 1780, before

John Skinner,
(L. C. Baron.)

The deed is hereupon inrolled by the clerk in court, for which he charges as follows:

Acknowledgment in court
To the master and clerk in court for inrolling
each sheet, out of which the clerk in court al-
lows to the solicitor two-pence per sheet

l. s. d.
0 4 0
0 0 8

The solicitor's fee and attendance are allowed as charged in the court of Chancery, besides what is given them out of the clerk in court's fees.

Assignment of Outstanding Debts due to a Bankrupt by the Assignees, under the Commission, pursuant to Agreement of Creditors, with a Power of Attorney to collect and get in the same.

This Indenture made, &c. between *A. B. of, &c. and C. D. of, &c.* assignees of the estate and effects of *John Thomas, of, &c. shopkeeper, grocer, and chapman*, against whom a commission of bankrupt hath been awarded and issued, of the one part, and *Samuel Hart, of, &c.* of the other part. Whereas at a meeting of the creditors of the said *John Thomas*, the bankrupt, at the *Half Moon Tavern, in Cheapside, London*, the 4th day of, &c. pursuant to notice given in the *London Gazette* for that purpose, at which time and place the major part of the creditors of the said *John Thomas* then present, who had duly proved their debts under the said commission, did then and there empower the said *A. B. and C. D.* to sell, dispose of, transfer, and assign, the several outstanding debts, then due, owing and payable to the said bankrupt or his estate, to the best purchaser or purchasers, and for the most money that could be got for the same. Now these presents witness, that the said *A. B. and C. D.* in pursuance of the power to them given by the creditors of the said bankrupt as aforesaid, and for and in consideration of the sum of 500 l. of, &c. to them in hand paid, by the said *Samuel Hart*, party to these presents, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and

set over unto the said *Samuel Hart*, all and every the sum and sums of money due, or that shall appear to have been due to him the said *John Thomas*, the bankrupt, at the time he became a bankrupt, or to them the said *A. B.* and *C. D.* as assignees of the estate and effects of the said *John Thomas* as aforesaid, from the several persons mentioned in the schedule hereto annexed, or from any of them, to have, hold, receive, perceive, and take the several sum and sums of money so due, or which shall appear to have been due to him the said *John Thomas* as aforesaid, or now due to them the said *A. B.* and *C. D.* as assignees of the estate and effects of the said *John Thomas*, from the several persons in the said schedule hereunto annexed, mentioned, or from any of them, unto him the said *Samuel Hart*, his executors, administrators, and assigns, as his and their own proper monies. And for the better enabling the said *Samuel Hart* to receive all and every the said sums of money so due and owing, or which shall appear to be due and owing, from the said several persons in the said schedule mentioned, or from any of them as aforesaid, they, the said *A. B.* and *C. D.* have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint the said *Samuel Hart*, their true and lawful attorney irrevocable, for them the said *A. B.* and *C. D.* and in their names as assignees as aforesaid, but for the proper use and behoof of the said *Samuel Hart*, to ask, demand, and receive, of and from the said several persons in the said schedule mentioned, the several and respective sums of money so mentioned to be due from such several persons, or from any of them; and upon receipt thereof, or any part thereof, receipts, or other good and sufficient releases, acquittances, and discharges, in the names of them the said *A. B.* and *C. D.* as assignees as aforesaid, to make and give. And also, that be the said *Samuel*

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must Hart, his executors or administrators, shall and may, in the names of them the said A. B. and C. D. as assignees as aforesaid, settle and adjust all or any account and accounts, which is or are now depending, unsettled and open, between the said John Thomas, and the several person or persons mentioned in the said schedule, or any of them, as occasion may be or require; and upon settling and adjusting of such account or accounts, in the names of them the said A. B. and C. D. as assignees as aforesaid, to ask, demand, and receive what shall appear to be coming due upon the said balance or balances of such accounts; and upon non-payment of all or any of the sums of money so due and owing as aforesaid, in the names of them the said A. B. and C. D. as assignees as aforesaid, to bring one or more actions, as he the said Samuel Hart shall think fit or be advised, for the recovery of what shall be so due and unpaid, and therein to proceed to judgment and execution; and upon payment of what shall be so due, or be recovered upon such judgment or judgments, in the names of them the said A. B. and C. D. as assignees as aforesaid, to give one or more releases for the same, as occasion may require, and generally to act, perform, and do, all and every such acts, matters and things, for the receiving and recovering all and every, or any of the said debts or sums of money due to the said John Thomas, the bankrupt as aforesaid, or to them the said A. B. and C. D. as assignees of his estate and effects, as fully and effectually, as if they the said A. B. and C. D. were personally present. And the said A. B. and C. D. for themselves severally, and for their several executors and administrators, do, and each of them doth, covenant, promise and agree, to and with the said Samuel Hart, his executors and administrators, that they the said A. B. and C. D. have not, nor hath either of them, any wife

acquitted, released or discharged, all or any of the persons mentioned in the said schedule, of and from the several sum of money which they respectively stand indebted to him the said *John Thomas*, or to them the said *A. B.* and *C. D.* as assignees as aforesaid. And further, that they the said *A. B.* and *C. D.* shall not, nor will at any time or times hereafter, without the consent of the said *Samuel Hart*, his executors or administrators, in writing for that purpose first had and obtained, any wise release, acquit, or discharge, all or any of the said person or persons from such respective debts, or any part thereof; nor shall or will, at any time or times hereafter, without such consent as aforesaid, release or disavow any actions, which shall be brought, sued, or prosecuted in their names, as assignees as aforesaid, for recovery of all or any of the said debts or sums of money by these presents granted, bargained, sold, assigned, transferred and set over, or mentioned or intended hereby so to be; but shall and will, at any time or times hereafter, upon the request, and at the costs and charges of the said *Samuel Hart*, his executors or administrators, make, do, and execute, or cause or procure, &c. all and every such further and other lawful and reasonable act and acts, thing and things whatsoever, for the further and better enabling the said *Samuel Hart*, his executors and administrators, to recover and receive all and every the debts, sum and sums of money hereby granted, bargained, sold and assigned, transferred and set over, or mentioned or intended so to be, as by the said *Samuel Hart*, his executors or administrators, or his or their counsel learned in the law, shall be reasonably devised, or advised and required. And the said *Samuel Hart* doth hereby for himself, his executors and administrators, covenant, promise and agree to and with the said *A. B.* and *C. D.* their executors and administrators, that he the said *Samuel Hart*,

Hart, his executors and administrators, shall and will, from time to time, and at all times hereafter, well and sufficiently bear harmless and keep indemnified the said *A. B.* and *C. D.* their and each of their heirs, executors and administrators, and their and each of their estates, goods and chattels, of and from all costs, charges, damages and expences whatsoever, which they the said *A. B.* and *C. D.* or either of them, their or either of their heirs, executors or administrators, or any of them, shall or may, at any time or times hereafter, bear, sustain, pay, or be put unto, for or by reason of any action or actions, suit or suits, to be brought by him the said *Samuel Hart*, his executors, administrators, or assigns, in the name or names of them the said *A. B.* and *C. D.* or either of them, as assignees as aforesaid, for the recovery of all or any of the debt or debts, sum or sums of money so by them assigned to the said *Samuel Hart*, in and by these presents as aforesaid.

In witness, &c.

The Schedule to which the above Indenture refers, &c.

Assignment from the Commissioners to new Assignees,

the former ones being removed (at their own desire),

by order, and after a temporary Assignment had

originally been made.

This Indenture tripartite, made the

in the twentieth year of the reign of our sovereign

lord George the Third, by the grace of God of Great

Britain, France, and Ireland, king, defender of the faith,

&c. and in the year of our Lord 1780, between *John Par-*

Hart

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triage of *and Charles Dennis* of
 of the first part, *Sylvester Douglas*, Esquire, *Isaac Bargrave*,
 and *William Munn*, Gentlemen, being the major part of
 the commissioners named and authorized, in and by a
 commission of bankrupt, awarded and issued forth against
Francis Gibbons of *of the second part*,
Andrew Finch of *of the third part*.
 Whereas a commission of bankrupt, under the great seal
 of Great Britain, bearing date at *Westminster*, the
 day of *1780*, grounded upon the several sta-
 tutes made and now in force concerning bankrupts, or
 some or one of them, hath been awarded and issued forth
 against the said *Francis Gibbons*, directed to *Charles Ro-*
binson, the said *Sylvester Douglas*, and *John Nares*, Esquires,
 together with *Isaac Bargrave* and *William Munn* Gentlemen,
 thereby giving full power and authority to the said com-
 missioners, four or three of them, to execute the same, as
 in and by the said commission, relation being thereunto
 had doth more fully and at large appear. And whereas
 the said *Sylvester Douglas*, *Isaac Bargrave*, and *William Munn*,
 being the major part of the said commissioners in the said
 commission named and authorized, having begun to put
 the said commission into execution, upon due examination
 of witnesses, and other good proof upon oath before them
 had and taken, found, or it otherwise appeared to them,
 that the said *Francis Gibbons*, for several years before the
 date and suing forth of the said commission, exercised and
 followed the trade and business of a merchant, and sought
 and endeavoured to get his living thereby, as others of the
 same trade or business usually do. And that he the said
Francis Gibbons, before the date and suing forth of the said
 commission, became indebted to *Charles Jones* of
 in the sum of 100 *l.* and upwards, and being so indebted,
 he

he the said *Francis Gibbons* did, in the judgment of the major part of the commissioners in the said commission named, become bankrupt to all intents and purposes, within the true intent and meaning of the several statutes in the said commission mentioned, some or one of them, and they declared him bankrupt accordingly. And whereas the said commissioners, parties to these presents, in further execution of the said commission, and of the statutes therein mentioned, and by virtue of the same, by indenture bearing date the * day of made between the said *Sylvester Douglas*, *Isaac Bargrave*, and *William Munn*, of the one part, and *Thomas Powell* of the other part, for the consideration therein mentioned, did as much as in them lay, and they lawfully might, order, bargain, sell, dispose, assign, and set over, unto the said *Thomas Powell*, his executors, administrators, and assigns, all and singular the goods, wares and chattels, debts, sum and sums of money, and all the personal estate whatsoever of the said *Francis Gibbons*, of which he was possessed or intitled unto, or of which any other person or persons was or were possessed, in trust for him at the time he became bankrupt, or at any time since. To hold, ask, demand, sue for, recover, levy and receive, all and singular the premises thereby assigned, or mentioned, or intended so to be, unto the said *Thomas Powell*, his executors, administrators, and assigns, in trust for the immediate preservation thereof, and to and for the use, benefit and advantage of all the creditors of the said *Francis Gibbons*, who had then sought, or should then after in due time come in and seek relief, under the said commission, according to the several statutes therein mentioned, or some or one of them, and to or for no other

* Date of the provisional assignment.

use,

use, trust, intent or purpose whatsoever, as in and by the said recited indenture, relation being thereunto had, will and may more fully and at large appear. And whereas the said *Thomas Powell* did, in and by the said recited indenture of assignment, covenant and agree, to and with the said commissioners, parties thereto, their executors and administrators, and to and with every of them, that he the said *Thomas Powell*, his executors or administrators, or some of one of them, should and would, as soon as an assignee or assignees of the said bankrupt's estate and effects, should be duly chosen and appointed, join with the major part of the commissioners named in the said commission, in assigning all and singular the said goods, chattels, debts, sum and sums of money, wares and merchandizes, and all other the premises in the said recited indenture assigned to him, unto such person or persons, as should be duly chosen and appointed to be the assignee or assignees of the said bankrupt's estate and effects, and that he the said *Thomas Powell* would deliver up all the estate and effects of the said bankrupt, as should or might have come to his hands or possession, or to the hands or possession, of any other person or persons, in trust for him, or for his use, unto such person or persons as should be duly chosen assignee or assignees of the said bankrupt's estate or effects, or otherwise, as the said commissioners should direct or appoint, as in and by the said recited indenture may more fully and at large appear. And whereas, at a meeting of the major part of the commissioners, in and by the said commission named and authorised, at the Guildhall of the city of London, the day of

pursuant to notice in the *London Gazette*, for that purpose given, the major part in value of the creditors of the said

Francis

Francis Gibbons then present, and who had proved their debts under the said commission, and whose debts respectively amounted to ten pounds or upwards, did nominate, elect and choose, the said *John Partridge* and *Charles Dennis*, to be the assignees of the estate and effects of the said *Francis Gibbons*, and desired an assignment to be made thereof to them accordingly by the said *Thomas Powell*, and the said commissioners. And whereas by indenture tripartite, bearing date the day of made between the said *Thomas Powell* of the first part, the said commissioners, parties hereto, of the second part, the said *John Partridge* and *Charles Dennis* of the third part, the said *Thomas Powell*, for the consideration therein mentioned, by the consent and direction of the said commissioners, parties hereto, testified by their being made parties to and sealing and delivering thereof, did order, bargain, sell, dispose, assign, and set over, unto the said *John Partridge* and *Charles Dennis*, their executors and administrators, all and singular the goods, wares, and chattels, debts, sum and sums of money, and all the personal estate whatsoever of the said *Francis Gibbons*, which he was possessed of or intitled unto, or which any other person or persons was or were possessed of, in trust for him at the time he became bankrupt, or at any time since; and all the right, title, interest, property, claim, and demand whatsoever of him the said *Thomas Powell* of, in, or to the same, or any part thereof, as assignee of the estate and effects of the said *Francis Gibbons*, and the said commissioners, parties thereto, being the major part of the said commissioners in and by the said commission named and authorised, in consideration of 5 s. to them, or one of them, in hand also paid by the said *John Partridge* and *Charles Dennis*, did as much as in them lay, and they lawfully might,

ratify

ratify and confirm unto the said *John Partridge* and *Charles Dennis*, all and singular the said goods, wares and chattels, debts, sum and sums of money, and other things, and all the estate whatsoever and wheresoever, of and belonging to the said *Francis Gibbons* therein before ordered, bargained, sold, disposed, assigned and set over by the said *Thomas Powell*, party thereto; to hold to the said *John Partridge* and *Charles Dennis*, their executors, administrators, and assigns, upon trust nevertheless, to and for the use, benefit and advantage, of all the creditors of the said *Francis Gibbons*, who had then already sought, or should thereafter in due time come in and seek relief by virtue of the said commission, according to the limitations and directions of the several statutes in that behalf made and provided, and to and for no other use, intent or purpose whatsoever, as in and by the said last recited indenture of assignment, relation being thereunto had, may more fully and at large appear. And whereas by an order of the present lord high chancellor of Great Britain, made on the _____ day of _____ instant, founded upon the petition of _____ and _____ creditors of the said *Francis Gibbons*, preferred to the said lord chancellor; his lordship upon hearing the said petition read, and what was alleged by the counsel for the said petitioners, and by consent of the counsel for the assignees, the said *John Partridge* and *Charles Dennis*, did (amongst other things) order, that the said *John Partridge* and *Charles Dennis*, at their own desire, should be discharged from being assignees of the said bankrupt's estate and effects, and that the major part of the said commissioners named in the said commission, should cause due notice forthwith to be given and published in the *London Gazette*, appointing a time and place for the creditors of the said *Francis Gibbons* to meet, in order to proceed

need to the choice of a new assignee or assignees, in the
 room of the said *John Partridge* and *Charles Dennis*, and
 that the creditors of the said bankrupt, who should be
 present at such meeting, should proceed to such new choice
 accordingly, and that after such choice, the major part of
 the said commissioners should make and execute a new
 assignment of the estate and effects of the said bankrupt,
 remaining unreceived, and not disposed of, to such person
 or persons, who at such meeting should be chosen such
 new assignee or assignees, and that the said *John Partridge*
 and *Charles Dennis* should join in the said assignment, to
 the said new assignee or assignees, as by the said in part
 recited order, relation being thereunto also had, may more
 fully and at large appear. And whereas, in pursuance of
 the said in part recited order, notice in the *London Gazette*
 of the day of this instant was duly given,
 purporting that the commissioners intended to meet on
 the day of this instant at four of
 the clock in the afternoon, at *Guildhall, London*, in order to
 proceed to the choice of new assignees, in the room of
 the said *John Partridge* and *Charles Dennis*: And whereas
 the commissioners, parties to these presents, in obedience
 to and in pursuance of the said order, and likewise of the
 said notice so given in the *London Gazette* as aforesaid, met
 at the *Guildhall* of the city of *London*, this day of
 in order to chuse an assignee or assignees of
 the said bankrupt's estate and effects, and the major part
 of the creditors of the said *Francis Gibbons* present, and
 who had proved their debts under the said commission, and
 whose debts respectively amounted to ten pounds or up-
 wards, did nominate, elect, and chuse the said *Andrew Finch*
 to be the sole assignee of the estate and effects of the said
Francis Gibbons, remaining unreceived and not disposed
 of,

of, in the room of the said *John Partidar* and *Charles Dennis*. Now this Indenture witnesseth, that the said *John Partidar* and *Charles Dennis*, in obedience to and in pursuance of the said recited order, and in consideration of the sum of 10*l.* of lawful money of Great Britain, to them in hand paid by the said *Andrew Finch*, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and also in consideration of the covenants herein after, on the part and behalf of the said *Andrew Finch*, his executor or administrators to be performed by the consent and direction of the said commissioners, parties to these presents, ratified by their being made parties to and sealing and delivering herof, have ordered, bargained, sold, disposed, assigned, and set over, and by these presents do order, bargain, sell, dispose, assign, and set over, unto the said *Andrew Finch*, his executor and administrators, all and singular the goods, wares, chattels, debts, sum and sums of money, and all the personal estate whatsoever, of the said *Francis Gibbons*, of which he was possessed or entitled to, or which any other person or persons, was or were possessed of, in trust for him at the time he became bankrupt, or at any time since, and all the right, title, interest, property, claim and demand whatsoever, of them the said *John Partidar* and *Charles Dennis*, of, in, or to the same, or any part thereof, as assignees of the estate and effects of the said *Francis Gibbons*, and the said commissioners, parties to these presents, being the major part of the said commissioners in and by the said commission named and authorized, in consideration of 5*l.* to them, or one of them, in hand also paid by the said *Andrew Finch*, have ratified and confirmed, and by these presents do, as much as in them lies, and they lawfully may, ratify and confirm unto the said

Andrew

Andrew Finch, all and singular the said goods, wares and chattels, debts, sum and sums of money, and other things, and all the estate whatsoever, and wheresoever, of and belonging to the said *Francis Gibbons*, herein before ordered, bargained, sold, disposed, assigned, and let over by the said *John Partridge* and *Charles Dennis*, parties hereto; to have and to hold, ask, demand, sue for, recover, levy, and receive the said goods, wares, chattels, debts, sum and sums of money, and other things, and all other the effects whatsoever, of or belonging to the said *Francis Gibbons*, hereby ordered, bargained, sold, disposed, assigned, and set over, or hereby mentioned or intended so to be, unto the said *Andrew Finch*, his executors, administrators and assigns, upon trust nevertheless, to and for the use, benefit, and advantage, of all the creditors of the said *Francis Gibbons*, who have already sought, or shall hereafter in due time come and seek relief by virtue of the said commission, according to the limitations and directions of the several statutes in that behalf made and provided, and to and for no other use, intent or purpose whatsoever: And the said *Andrew Finch*, for himself, his heirs, executors, and administrators, doth hereby covenant, promise and agree, to and with the said commissioners, parties to these presents, and to and with every of them by these presents, that he the said *Andrew Finch*, his executors, administrators, or assigns, shall and will, with all convenient speed, by all lawful and equitable ways and means, use his utmost endeavours to recover and get in the several goods, wares and chattels, debts, sum and sums of money, and all other the estate and effects of the said *Francis Gibbons*, and after possession had and obtained of the said goods, wares, and chattels, debts, sum and sums of money, estate and effects whatsoever, or any part thereof, shall and will, sell and

dispose

dispose of the same, to and for the most and best value he can get for the same. And further, that he the said *Andrew Finch*, his executors, administrators, and assigns, shall and will from time to time, and at all times hereafter, upon reasonable request and notice to him given for that purpose, render and give unto the said commissioners, parties to these presents, or the major part of the said commissioners, in and by the said commission named and authorized, or to the major part of the said commissioners to be named in and by any renewed commission which may be awarded against the said *Francis Gibbons*, at such time and place as they shall appoint, a true, just and perfect account in writing, under the hand of the said *Andrew Finch*, his executors and administrators, of what and how much money, or other satisfaction, he the said *Andrew Finch*, his executors or administrators, shall have had, recovered, and received, by virtue or means of this present deed of assignment, or otherwise, out of the estate and effects of the said *Francis Gibbons*, and such money or other satisfaction, as upon such account shall appear to be had, raised, and received by the said *Andrew Finch*, his executors or administrators, he the said *Andrew Finch*, his executors or administrators, shall and will truly pay, or cause to be paid unto them the said commissioners, parties to these presents, or the major part of the said commissioners, in and by the said commission named, or to the said commissioners to be named in any such renewed commission, or the major part of them, or to such person or persons as they shall appoint, to the end, the same or other satisfaction may be, by them the said commissioners, in and by the said commission named and authorized, or the major part of them, ordered, disposed, distributed and divided, unto and amongst all and every the creditors of the said *Francis Gibbons*, who have already sought, or shall hereafter in

in due time come in and seek relief by virtue of the said commission, according to the limitations and directions of the several statutes therein mentioned, proportionably according to the several debts owing to them respectively from the said *Francis Gibbons*. And lastly, the said *Andrew Finch* doth hereby for himself, his heirs, executors and administrators, covenant, promise, and agree, to and with the said commissioners, parties to these presents, their heirs, executors, and administrators, that he the said *Andrew Finch*, his executors and administrators, shall and will, from time to time, and at all times hereafter, well and sufficiently save, defend, keep harmless and indemnified the said commissioners, in and by the said commission named and authorised, and also the said *John Partridge* and *Charles Dennis*, their executors, and administrators, and every of them, their and every of their bodies, lands, tenements, goods, and chattels, of, and concerning, or concerning all and all manner of action and actions, suits, arrests, troubles, costs, damages, and expences whatsoever, which they or any of them shall sustain or be put unto, for or by reason of this present deed of assignment, or any other act or acts, thing or things, lawfully done or executed by virtue of the said commission, or the said recited assignment, or their or any of their lawful intermeddling in any of the estate of the said *Francis Gibbons*.*

In witness, &c.

* For a precedent of assignment where one assignee only is removed, *vid. infra*.

Warrant

Keeper of his Majesty's Prison of Newgate, or to his Deputy there, **Warrant to the Keeper of the King's Bench Prison, to bring the Bankrupt before him to be examined.**

Whereas a commission of bankrupt hath been awarded and issued against **John Thomas**, or, &c. directed to us whose names are hereunto subscribed, and to the other commissioners in the said commission named; and he being declared bankrupt, and the 1st day of June instant, being one of the days appointed in the *London Gazette* for the said **John Thomas** to surrender himself to the said commissioners, and we being informed that the said **John Thomas** is in your custody upon legal process, and not in execution, These are therefore to desire you to bring the body of the said **John Thomas** before us at *Guildhall*, in the city of *London*, on *Monday* next, being the 1st day of *June* instant, at eleven o'clock in the forenoon, in order to be examined by us, pursuant to the act or acts of Parliament made and now in force concerning bankrupts, and this shall be your sufficient warrant. Given under our hands this 27th day of *May*, 1785, at *Westminster*, in the 1st year of the said Majesty's Majesty, *William Dampford*, *Henry Hanway*, *Henry Russell*, *To Benjamin Thomas, Esq. Marshal of the King's Bench Prison, or to his Deputy there.*

If the bankrupt is in the Fleet Prison, the warrant must be directed "To *John Eyles, Esq. Warden of his Majesty's Prison of the Fleet*, or to his Deputy there." If in Newgate, "To the Sheriff of *Middlesex*, or to *Richard Alderson*, Keeper

Keeper of his Majesty's Prison of *Newgate*, or to his Deputy there." If in either of the Compters, "To the Sheriff of *London*, and to the Keeper of the *Prison* or *Wood-street* Compter, or to his Deputy there."

Whereas a commission of bankrupt hath been awarded, and the application to enlarge the time for the bankrupt's surrender, must be by petition to the Great Seal, by days at least before the last sitting appointed in the *Gazette*; this petition may be either in the name of the bankrupt, or of his assignees.

In the matter

of *John Thomas*, bankrupt.

To the right honorable

the lord high Chancellor of Great Britain.

The humble petition of *John Thomas*, bankrupt.

Sheweth, That a commission of bankrupt, under the great seal of Great Britain, bearing date at *Westminster* the 4th day of May last, upon the petition of *Thomas Hopkins*, of *Yarmouth*, in the county of *Devon*, mercer, was awarded and issued against your petitioner, by the name and description of *John Thomas*, of the city of *London*, merchant; which commission was directed to *William Bampfylde*, *Henry Munro*, *Murray Russell*, and *Henry Cooper*, Esquires, and *Richard Flar-*

graves, Gentleman, as commissioners to execute the same. That your petitioner hath been duly declared bankrupt by the major part of the said commissioners, in and by the said commission named and authorized, and by summons under their hands, and also by notice in the *London Gazette* of *Thursday* the 5th day of *May* 1786, was required to surren-

der himself to the said commissioners, or the major part of them, at *Guildhall, London*, to be examined by them on the 10th and 20th days of the said month of *June* respectively, at eleven of the clock in the forenoon, on each of the said days, touching the disclosure and discovery of his estate and effects, and on the 5th day of *July* last, your petitioner was, by such summons and notice, required to finish his examination under the said commission.

That your petitioner did surrender himself to the said commissioners on the said 10th and 20th days of *June* last, and submitted to be examined touching the disclosure and discovery of his estate and effects, and to conform himself to the several acts of parliament made, and now in force, concerning bankrupts.

That your petitioner is preparing and settling his affairs, in order to make a full and true disclosure and discovery of all his estate and effects; but your petitioner finds his accounts so very long, intricate, and perplexed, that he cannot possibly finish the same by the time limited by the said commissioners summons and notice respectively for that purpose.

Your petitioner, therefore, most humbly prays your lordship would be pleased to order, that the time for your petitioner's surrendering himself to the commissioners in the said commission named, or the major part of them, and for fully disclosing and discovering his estate and effects, and finishing his last examination under the said commission, as the law in such cases requires, be enlarged for

June, 1780.

Be it as prayed,
hereof giving notice to the commissioners forthwith.

Thurlow, C.

for

for the space of *forty-nine* days, to
be computed from the day
of 1780.

And your petitioner (as in duty bound)
shall ever pray, &c.

Notice is given by personally delivering to the commis-
sioners, or leaving at their respective houses or places of
abode, an examined and true copy of the said petition, with
the order of the lord chancellor thereon.

In the matter of *John Thomas,* To the right honour-
bankrupt. able, &c. [in the
other petition.]

*The humble Petition of Thomas Hopkins [sole assignee,
if so] or, and Robert Simpson, assignees of the es-
tate and effects of the said Bankrupt.*

Sheweth,

That a commission of bankrupt, under the great sea of
Great Britain, bearing date at Westminster, the day
of August, upon the petition of *Samuel Hare*, of *Hill*
Hill, in the county of *Middlesex*, grocer, was awarded
and issued against *John Thomas*, of the city of *London*, mer-
chant, which commission was directed to *William Damp-
ford*, *Henry Hunter*, *Henry Russell*, *Henry Cooper*, Esquires,
and *Richard Hargrave*, Gentleman, as commissioners to
execute the same.

That the said *John Thomas* hath been declared bankrupt
by the major part of the said commissioners acting under
the said commission, and by summons under their hands,

and also by notice sent the said *London Gazette* on Tuesday the 21st instant day of May 1780, was required to surrender himself to the said commissioners, or the major part of them, at *Guildhall, London*, to be examined by them on the 10th and 20th days of the said month of June respectively, at four of the clock in the afternoon, on each of the said days, touching the disclosure and discovery of his estate and effects, and on the 5th day of June last, the said bankrupt was, by such summons and notice, required to finish his examination under the said commission.

That the said bankrupt hath not yet surrendered himself to the commissioners in the said commission named, or to the major part of them, at the said two first sittings already had under the said commission, or at either of them, and the said bankrupt is now at *Paris*, in the kingdom of *France*, and intends to surrender himself to the said commission, as your petitioners are informed, but will not be able to arrive in *London* by the 5th day of July.

Or thus:

That your petitioners have been duly chosen assignees of the estate and effects of the said bankrupt, and find that the said bankrupt is in an ill state of health, and a prisoner in the *Fleet*, and is not prepared to finish his examination in the time limited for that purpose, in the manner prescribed by the act of parliament in that case made and provided, therefore hath not as yet surrendered himself to the said commissioners, which he purposes to do, as your petitioners are informed, as soon as his said examination can be prepared.

In

In case the bankrupt hath already had time, but not the full *forty-nine* days, then you set forth the commission, the commissioners declaration of the bankruptcy, the terms for surrender, (as before) and then the last order for time, thus:

That the said bankrupt being then in an ill state of health, and a prisoner in the *Fleet*, and not being then prepared to finish his examination; your petitioners, who have been duly chosen assignees of the said bankrupt's estate and effects, on the *day of* *last*, preferred their petition to your lordship, and obtained an order thereon, for *forty* days further time, to be computed from the *day of* *for the* said bankrupt to surrender himself, and finish his examination.

That your petitioners find, that the said bankrupt, by reason of his ill state of health as aforesaid, hath not been able to prepare and complete his examination, and in as much as the time granted by your lordship, for the said bankrupt to finish his examination, will expire on the *day of* *next*,

day of *1780.* Your petitioner therefore most humbly prays your lordship, that the time for the said bankrupt, his surrendering himself, his surrendering himself, and disclosing his estate and effects to the acting commissioners in the said commission named and authorised, and for his finishing his examination before them, be further enlarged
ed before

ed for the space of ten days, before them, may be further enlarged for the space of ten days, to be computed from the said day of next.

hereof give notice to the day of next. commissioners forthwith.

Thurlow, C.

And your petitioner shall ever pray, &c.

Affidavit of the Service of a Petition.

In the matter of *John Thomas*, bankrupt.

John Knight, of, &c. gentleman, maketh oath that he this deponent did, on the day of serve *William Bumpstead*, *Henry Hunter*, and *Henry Russell*, Esquires, with a petition preferred by *Thomas Hopkins* and *Robert Simpson*, assignees of the estate and effects of the said *John Thomas*, the bankrupt in this matter, to the right honourable the lord high chancellor of *Great Britain*, with his lordship's order thereon, bearing date the day of the said month of whereby it was ordered, that the time for the said *John Thomas* the bankrupt's surrendering himself to the commissioners, in the said commission named, or the major part of them, and disclosing and discovering his estate and effects, and finishing his last examination, be further enlarged for the space of ten days, to be computed from the day of next, (whereof notice was forthwith to be given) in manner following; that is to say, by personally delivering to the said *William Bumpstead*, *Henry Hunter*,
ter,

ter, and *Henry Russell*, respectively, a true copy of the said petition, and orders thereon; and at the same time shewing them respectively the said original petition and order thereon. And this deponent further saith, that the said *William Bumpstead*, *Henry Hunter*, and *Henry Russell*, are the acting commissioners, under the said commission, as this deponent hath been informed, and believes.

Sworn at the public office
in *Symond's Inn*, this *John Knight*
day of
before me

Notice of the enlargement of the bankrupt's time must be given in the *Gazette*.

Memorandum of the Bankrupt's having enlarged his Time for surrendering, and making a full disclosure and discovery of his estate and effects.

At, &c.

Be it remembered, that this being the day appointed, pursuant to notice in the *London Gazette*, for *John Thomas*, of, &c. the person against whom the commission of bankrupt, now in prosecution, is awarded and issued, to surrender himself, and to make a full disclosure and discovery of his estate and effects, and to finish his examination under the said commission, we, whose names are hereunto subscribed, being the major part of the commissioners in and by the said commission named and authorised, met the day and year, and at the place above mentioned, pursuant to such notice; at which time a petition from the said bankrupt,

rupt, (or from the assigment in behalf of the said bankrupt) preferred to the right honourable the lord high chancellor of Great Britain, praying that the said bankrupt's time for surrendering himself, and making a full disclosure and discovery of his estate and effects, and to finish his examination, might be enlarged, (or further enlarged) for the space of

day of instant, with his lordship's order thereon for that purpose, bearing date the day of last; was produced to (having been before served on) (or served on) us the said commissioners; we the said commissioners do therefore defer taking such examination till the said day of next; and we hereby accordingly adjourn to that day, at this place, at o'clock in the afternoon of the same day for that purpose.

William Bumpstead,
Henry Hunter,
Henry Russell.

If the bankrupt happens to be a prisoner, then you prepare a memorandum of the commissioners adjourning to the prison, in order to take his examination.

At, &c.

Memorandum, that we whose names are hereunto subscribed, being the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against John Thomas, of &c. met here the day and year, and at the place above-mentioned; pursuant to notice in the *London Gazette*, in order to finish the said bankrupt's last examination; but the said bankrupt being

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a prisoner in the King's Bench prison in execution (or in a very ill state of health, and not able to attend here to be examined) we do therefore adjourn to the said prison of the King's Bench, to take the said bankrupt's examination.

William Bumpstead.

Henry Hunter.

Henry Ruffel.

Memorandum of the Bankrupt's Examination and Discovery.

At the King's Bench prison, in St. George's Fields, in the county of Surry, by adjournment from Guildhall, London, the day of 1768.

William Memorandum, that *John Thomas* and *Henry Bumpstead*, *Wilson* of, &c. the persons against whom the commission of bankrupt now in prosecution is awarded and issued appearing (again) before us the major part of the commissioners in the said commission named and authorized, in order to finish their examinations pursuant to notice in the *London Gazette* for that purpose given, and being now sworn and examined, they speaking for themselves respectively [or "each speaking for himself"] upon their oaths say, that the several books of accounts, numbered respectively, 1, 2, &c. and respectively signed by these examiners, and the several paper-writings hereunto annexed, marked respectively with the letters A, B, &c. and also respectively signed by these examiners, under each plain, and delivered by these examiners,

Appendix of Proceedings

or one of them, at the time of this their examination, and exhibited unto the major part of the Commissioners, in the said commission named and authorized, together with the household goods, utensils, stocks in trade, estates and effects seized and taken by the messenger, and now in the possession of the assignees chosen under the said commission, or one of them, and also rings, and in monies now delivered up by this examinant *John Thomas*, and rings, a gold watch and in monies now also delivered up by this examinant *Henry Wilson* to the said Commissioners, do contain a full and true disclosure and discovery of all these examinants, and of either of their estate and effects, both real and personal, and how, and in what manner, to whom, and upon what consideration, and at what time or times they, or either of them, have or hath disposed of, assigned, or transferred any of his goods, wares, merchandizes, monies, or other estate and effects, (and all books, papers and writings, relating thereto,) of which they or either of them was or were possessed, or in or to which they or either of them was or were any way interested or intitled, or which any person or persons had, or hath, or have in trust for them, or either of them, or for their or either of their use, at any time before or after the issuing of the said commission, or whereby they these examinants, or either of them, their or either of their families, hath or have, or may have, or expect, any profit, possibility of profit,

profit, benefit or advantage whatsoever, except only such part of their estates and effects as have been really and truly before sold, or disposed of, in the way of their trades and dealings, and except such sums of money, as have been laid out in the ordinary expence of themselves and families. And these examiners further say, that at the time of their former examinations, and at this the time of their last examinations, they have respectively delivered up to the said commissioners, or the major part of them, or to their assignees, all such part of their these examiners's goods, wares, merchandizes, monies, estates and effects, and all books, papers and writings, relating thereunto, as at the time of such their former examinations were, or now are in their or either of their possessions, custodies or powers, (the necessary wearing apparel of these examiners, and of their wives and children only excepted;) and these examiners further say, that they have not, nor hath either of them, removed, concealed or embezzelled any part of their or either of their estates, real or personal, or any books of accounts, papers or writings, relating thereto, with intent to defraud their or either of their creditors.

Henry
Ruffel.

John Thomas.

Henry Wilson.

It is usual for the commissioners to recommend, and the creditors to agree, to return the bankrupts their rings, monies, &c. particularly the jewels, &c. of their wives.

Be

John Parrott, a bankrupt, grounded upon the several
 statutes in that behalf made, and that he had been
 and issued against him, and that he had been
 merchants, and that he had been
 commission and for the said John Parrott, and
 taken the oath of qualification, and that he had
 in the fifth year of his Majesty's reign, entitled
 "An Act to prevent the committing of frauds by bank-
 rupts, and to provide for the better execution of the powers of
 authorities given and granted by the said act or acts of
 parliament now in force concerning bankrupts, and to
 Charles Nelson Cole, Esq; and Arthur Trollope, Gentleman,
 being the major part of the commissioners named to execute
 the said commission, and he having appeared to the major
 part of the said commissioners, in the said commission
 named and authorized, upon a good and sufficient proof
 upon oath, that the said John Parrott, hath from the
 month of July 1798, carried on the trade and business of
 a merchant, in his house or Lodging-house, and by buy-
 ing and selling linen, lace, and other wares and merchan-
 dize, and by exporting and importing divers and sundry
 kind of goods, and hath thereby sought, and endea-
 voured to get his living, as other merchants usually
 do, and in the course of his said trading and dealing, he
 became indebted unto William Hewitt, of Newgate Street,
 London, warehouseman, in the sum of 106 l. and upwards,
 for goods sold and delivered; and also have found upon
 good proof, upon oath, that the said John Parrott did,
 before the date and suing forth of the said commission, be-
 come a bankrupt, within the true intent and meaning
 of the several statutes made and now in force concerning
 bank-

bankrupts, some or one of them. And they did adjudge and declare him a bankrupt accordingly.

And whereas the major part of the said commissioners did cause notice to be given in the *London Gazette*, of the 22d. day of *January* last past, that the said *John Perrott* was thereby required to surrender himself to the said commissioners in the said commission named, or the major part of them, on the 16th of *January*, and on the 4th of *February* last past, and on the 4th of *March* last, at four of the clock in the afternoon, on each of the said days, at *Guildhall, London*; and make a full disclosure and discovery of his estate and effects. And whereas the said *John Perrott* did, on the said 4th day of *February* last, surrender himself to the major part of the commissioners, in the said commission named and authorised; but, being sworn and examined, said that he was not then prepared to make a full disclosure and discovery of his estate and effects, but prayed time for the doing thereof, which was granted to him accordingly. And whereas the said *John Perrott* attended the major part of the commissioners, in and by the said commission named and authorised, on the said 4th day of *March*, in order to finish his examination, and to make a full disclosure and discovery of his estate and effects, but producing to the said commissioners, an order of the right honourable *Sir Robert Henley*, knight, *Lord Keeper* of the *Great Seal* of *Great Britain*, dated the 28th day of the said *February* 1760, for enlarging the time of the said *John Perrott*, for disclosing and discovering his estate, and finishing his examination for the space of forty-six days, to be computed from the said 4th of *March* to this day. And whereas the said *John Perrott* attended us on this day, in pursuance of the said order, in order to finish his examination, and to make a full disclosure and discovery of his

his

his estate and effects, and being then and there duly sworn and required by us to make such disclosure and discovery; we the said commissioners did cause the following question in writing to be propounded to him the said *John Perrott*, (that is to say) "As you do admit that you have spent the last week, previous to this your examination, with Mr. *Maynard*, one of your assignees, to settle and adjust your accounts, and to draw up a true state thereof, to enable you to close such your examinations, and do likewise admit, that upon such state thereof, it appears, that after giving you credit for all sums of money paid by you, and making you a debtor for all goods sold and delivered to you from your first entering into trade to the time of your bankruptcy, it appears, that there is a deficiency of the sum of 13,513*l*. Give a true and particular account what is become of the same, and how and in what manner you have applied and disposed thereof." To which question so put by us, as aforesaid, the said *John Perrott* did wilfully and obstinately refuse to give any other than the following general answer, (that is to say) "That on goods sold this last year I have lost upwards of 2000*l*. and by mournings I lost upwards of 1000*l*. and, that for nine or ten years I have, I am sorry to say it, been extremely extravagant, and spent large sums of money." *John Perrott*. Which answer of the said *John Perrott* not being satisfactory to us the said commissioners: These are therefore to will, require, and authorise you immediately, upon receipt hereof, to arrest, and take into your custody, the body of the said *John Perrott*, and him safely to convey to his majesty's prison of *Newgate*, and him there to deliver to the keeper of the said prison, who is hereby required and authorized, by virtue of the commission and statutes aforesaid, to receive

the said *John Perrott* into his custody, and him safely to keep and detain, without bail or mainprize, until such time as he shall submit himself to us the said commissioners, or the major part of the commissioners, by the said commission named and authorised, and full answer make, to our or their satisfaction, to the question so put to him by us as aforesaid. And for so doing this shall be your sufficient warrant. Given under our hands and seals at the *Guildball* of the city of *London*, this 19th day of *April*, in the year of our Lord 1760.

To *William Chesbysre*, our
messenger, or *Robert F. Fisher*, (L. S.)
Brown, his assistant. Cr. *Lofft*, (L. S.)
And *Wm. Crowley*, (L. S.)

To *Richard Akerman*,
keeper of his Majesty's
prison of *Newgate*, or
to his deputy there.

If the bankrupt does not surrender himself to the commissioners by 12 o'clock at night, the messenger warns him to do, by the following proclamation made by him in the middle of *Guildball*.

The Proclamation.

John Thomas, John Thomas, John Thomas, come and surrender yourself forthwith to *William Bumpstead, Henry Hunter, and Henry Russel*, Esquires, his Majesty's acting commissioners, named and authorised in and by a commission of bankrupt awarded and issued, and now in prosecution against you, the said *John Thomas*, the said commissioners being

being now present in Guildhall, London, ready to take your surrender; and this you are not in any wise to omit, on pain of death, the punishment by the statute made and now in force concerning bankrupts, in that case on you the said John Thomas inflicted.

If the bankrupt does not surrender himself after this proclamation and warning, then the commissioners sign the following memorandum.

Memorandum, when the Bankrupt does not appear

at all. *At, &c.*

Be it remembered, that we whose names are hereunto subscribed, being the major part of the commissioners named and authorised in and by a commission of bankrupt, awarded and issued, and now in prosecution, against John Thomas, of, &c. met together the day and year, and at the place above mentioned, pursuant to notice in the London Gazette, for the said bankrupt to surrender himself to the major part of the commissioners, in and by the said commission named and authorised, and to make a full disclosure and discovery of all his estate and effects, at which time and place the said John Thomas did not surrender himself, according to an act of parliament passed in the fifth year of the reign of his late Majesty, King George the second, intitled, &c. An act to prevent the committing of frauds by bankrupts; although we attended in expectation of such surrender, till past twelve o'clock at night, and although

though the said bankrupt was warned by proclamation to surrender himself.

William Bumpstead.

Henry Hunter.

Henry Russell.

Petition for Bankrupt's being examined before the Commissioners, on the special circumstances of his case, after the expiration of the forty-two days, though he had not surrendered, or procured any enlargement of time, with the order thereon.

In the matter of John Thomas, bankrupt.

To the right honourable, &c.

The humble Petition of the said John Thomas.

Sheweth,

That a commission of bankrupt, bearing date at Westminster the 17th day of 1780, was awarded and issued against your petitioner, then of the parish of in the county of dealer and chapman, on the application of A. B. and C. D. then of the parish of afore said, and partners, your petitioner's creditors, and was directed to certain commissioners therein named, the major part of whom declared your petitioner a bankrupt.

That by the commissioners summons, and also by notice inserted in the London Gazette of the day of 17 your petitioner was required to surrender himself before the major part

part of the commissioners acting under the said commission, on the and days of then next, in order to be examined from time to time, touching the disclosure and discovery of his estate and effects, and on the day of then next following, your petitioner was, by such summons and notice, to finish his examination under the said commission.

That such commission of bankrupt was so taken out against your petitioner, without his knowledge or privity, and that, previous to the issuing of the same, your petitioner being in insolvent circumstances, and being arrested at the suit of a creditor, for the sum of ten pounds or thereabouts, and your petitioner being afraid that, unless he raised the money to pay and discharge the same, he should be detained for larger debts, your petitioner with great difficulty raised money sufficient to pay and discharge the same, and immediately upon getting discharged from such arrest, and for fear of being again arrested for larger debts, and put into gaol, your petitioner, on or about the day of absconded, and went away from his dwelling-house, in the parish of afore-
said, and left his wife and family there, and went over to *Calais*, in the kingdom of *France*, where he arrived on or about the day of the same month of but your petitioner did not take any money, goods, or other effects whatsoever, with him to *Calais* afore-
said, save and except the sum of two guineas, or thereabouts.

That upon your petitioner's so leaving his said place of abode in *London*, as afore-
said, he gave orders and directions to his wife to come after him.

That your petitioner's said wife and family did, in pursuance of such directions from your petitioner as afore-
said, leave

leave his said house the day after your petitioner departed from thence, and came to your petitioner at *Dover*, and your petitioner and his said wife and child went from *Dover* to *Calais*, and from thence to *St. Omer's* in *French Flanders*, where they stayed for about three months.

That about two months after your petitioner arrived at *St. Omer's*, as aforesaid, he received a letter from a friend in *London*, informing him that a commission of bankrupt was issued against him; but your petitioner not taking with him more than two or three guineas when he left his said dwelling-house in *London* as aforesaid, and having contracted several debts, at *St. Omer's*, for the necessary subsistence of himself and family, was rendered, on account thereof, incapable of coming away from thence, until he had paid and satisfied the same, and not having wherewith so to do, your petitioner was obliged to beg and crave the charitable assistance of persons there, to aid and assist him therein, which with great difficulty he procured, and immediately set out for *England*, and upon coming to *Calais*, and sending for a *Gazette*, to his great surprise found, that the day appointed for his last examination (to wit) the day of _____ was elapsed, and had expired several days, notwithstanding which your petitioner set out, and came over to *England*, and begged his way up to *London*, where he arrived in or about the beginning of the month of _____ 17____.

That your petitioner, upon his arrival in *England*, made many applications to the assignees and creditors under the said commission, acquainting them of the circumstances of your petitioner's case, and that he was ready and willing to submit to the commission, and conform himself thereto, some of whom were and still are willing to relieve your petitioner, if possible, from the pains and penalties he may

be subject to, for not surrendering to the said commissioners in due time, and others are rigid, and threaten to prosecute your petitioner, notwithstanding your petitioner hath been informed, and verily believes, that the clerk under the said commission proposed to petition your lordship for further time to surrender to the said commission, but they would not give him their consent thereto, which if they had, your petitioner would have been in England in due time.

That your petitioner is now desirous, not only of surrendering himself, and of being examined, as the acting commissioners shall think fit, but he is also willing to submit himself, and to finish his examination, before the acting commissioners, whenever they shall think fit to fix and appoint a meeting for that purpose.

Your petitioner therefore most humbly prays your lordship, that you would be pleased to order the major part of the commissioners named in the said commission, forthwith to appoint one or more meetings, at such times and place as they shall think proper, for your petitioner to appear and surrender himself before them, and to make a full disclosure and discovery of his estate and effects, and also to finish his examination under the said commission, and to order the said commissioners to cause due notice of such meeting or meetings to be given in the *London Gazette*, that such of your petitioner's creditors, as shall think proper, may be present at your petitioner's examination,

examination, and that your lordship would be pleased to direct the commissioners to enter on their proceedings an account of the cause which prevented your petitioner from surrendering himself and finishing his examination, within such time as he ought to have finished the same, or that your lordship will be pleased to make such order in this matter, for your petitioner's relief, as to your lordship shall seem meet.

And your petitioner (as in duty bound) shall ever pray, &c.

Order thereon.

Lord Chancellor,

In the matter, &c.

After reciting the above petition, the order goes on thus: Whereupon all parties concerned were ordered to attend me on the matter of the said petition, and counsel for the petitioner, and of one of the assignees under the said commission, this day attending accordingly. Now upon hearing the said petition and several affidavits read, and what was alledged on both sides (no person attending on the behalf of the other assignee, although he was duly served with the said petition, and my order thereon, as by the affidavit of appears, I do think fit, and accordingly order, that the major part of the commissioners named in the said commission, shall cause due notice to be forthwith given in the *London Gazette*, appointing a time

time for the said *John Thomas*, the petitioner, to surrender himself to the commissioners, in the said commission named, or the major part of them, at the *Guildhall* of the city of *London*, in order to his being examined, touching the disclosure and discovery of his estate and effects, and to finish his examination under the said commission; and any of the creditors of the said *John Thomas*, the petitioner, as shall think proper, are to be present at his examination, and to object to the disclosure and discovery of his estate and effects. And I do order, that the said commissioners shall enter in their proceedings under the said commission, an account of the accident that prevented the petitioner *John Thomas* from finishing his examination before them, within such time as he ought to have finished the same, and the said commissioners to take such examination in pursuance of this order.

Letter of Attorney to sign consent to the Commissioners certifying the Great Seal, that the Bankrupt hath conformed; and to consent to Assignees commencing suits in equity, &c. and to receive dividends.

Know all men by these presents, that we *Thomas Hopkins*, of, &c. and *Robert Simpson*, of, &c. creditors of *John Thomas*, of, &c. the person against whom a commission of bankrupt is awarded and issued, and now in prosecution, and who have duly proved our respective debts under the said commission, have made, ordained, authorised, constituted, and appointed, and by these presents do make, ordain, authorise, constitute, appoint, and in our places and steads respectively put *Samuel Hart*, of, &c. to be our true and lawful attorney, for us and in our names respectively to
consent

consent with whom the monies to be received from time to time, when the same shall amount to the sum of 100*l.* or upwards, out of the bankrupt's estate and effects, shall remain until the same be divided. And also for us and in our names, places, and steads respectively to vote in the choice of one or more new assignees or assignees of the said bankrupt's estate and effects, in case of any alteration or change of the present assignees. And also for us and in our names, places, and steads respectively, to consent to the commissioners in and by the said commission named and authorized, or the major part of them, signing a certificate for the said bankrupt's having the allowance and benefit given to bankrupts, by an act of parliament passed in the fifth year of the reign of his late Majesty King George the Second, intituled, "An act to prevent the committing of frauds by bankrupts," and that the said bankrupt may be discharged from his debts, in pursuance of the said act. And also for us and in our names respectively to consent, not only to the commencing of any suit or suits in equity, by the assignee or assignees under the said commission, touching the said bankrupt's estate, but also to the submitting of any dispute or difference between such assignee or assignees, or any other person or persons whatsoever, for or on account or by reason or means of any matter, cause or thing whatsoever, relating to the said bankrupt's estate or effects, and likewise to such assignee or assignees making any composition with any person or persons, debtors or accountants to the said bankrupt, where the same shall appear necessary and reasonable. And also for us and in our names, places, and steads respectively, and for our own proper uses and benefits respectively, to ask, demand, sue for, and receive of and from the assignee or assignees of the said bankrupt's estate and effects, or whom else these presents do,

Appendix of Precedents.

CXXV

shall, or may concern, all and every such sum and sums of money, as now is or are, or which shall hereafter become, due or payable to us the said *Thomas Hopkins* and *Robert Simpson* respectively, for our respective dividendes or shares of the said bankrupt's estate and effects, on our said respective debts of,—and duly proved under the said commission as aforesaid, and on receipt thereof, for us and in our respective names to sign, seal, and deliver all and every such good and sufficient receipts, acquittances, releases and discharges to the said assignee or assignees, as shall and may be lawful, fit and convenient to be executed, and generally to do all and every such further and other lawful act and deed, matter or thing in the law, for the better executing and discharging the power and authority hereby given, as fully and amply, to all intents and purposes, as we ourselves or either of us might or could do, if personally present, and did the same; hereby ratifying, allowing, and confirming, all and whatsoever our said attorney shall or may lawfully do, or cause to be done, in and about the said premises, for the better executing the purposes aforesaid, by virtue of these presents. In witness whereof we the said *Thomas Hopkins* and *Robert Simpson* have to these presents set our hands and seals this _____ day of _____ in the year of our Lord, 1780.

Sealed, &c.

This letter of attorney must be accompanied with an affidavit of its due execution.

Affidavit of the execution of the above Letter of Attorney.

John Knight, of *marked* oath, that he was present and did see *Thomas Hopkins* and *Robert Simpson*, of, &c. duly sign, seal, and as their act and deed deliver the letter of attorney hereunto annexed, and that the names of *Thomas Hopkins* and *Robert Simpson*, respectively subscribed against the seals of the said letter of attorney, were the proper hand-writing of the said *Thomas Hopkins* and *Robert Simpson*, and that the names of this deponent, and of *William Wyl*, subscribed to the said letter of attorney, as witnesses to the execution thereof, are of this deponent's, and of the said *William Wyl*'s own proper respective hand-writings.

John Knight,
Sworn at *Chelmsford*, in the county
of *Essex*, the 11th day of *July*,
in the year of our Lord, before
me,

Robert Fitzpatrick,
Master in *Chancery* Extraordinary.

The bankrupt's certificate is no part of the proceedings under the commission, but is to be paid for by the bankrupt himself.

Form of a Bankrupt's Certificate.

To the Right Honourable the Lord High Chancellor of
Great Britain.

We whose names and seals are hereunto subscribed and set, being the major part of the commissioners, named and authorized in and by a commission of bankruptcy awarded
and

and issued against *John Thomas*, of *Gr.* (as described in the commission) bearing date at *Westminster*, the 8th day of, *Gr.* directed to *William Bunsford*, *Henry Hunter*, *Henry Russell*, and *Henry Gwyer*, Esqrs. and *Richard Hargreaves*, Gent. do humbly certify to your Lordship, that the major part of the commissioners by the said commission authorised having begun to put the said commission into execution did find that the said *John Thomas* became a bankrupt, since the 10th day of *May*, 1784, and before the date and suing forth of the said commission, within the true intent and meaning of the statutes made and now in force concerning bankrupts or some of them, and did thereupon declare and adjudge him bankrupt accordingly. And we further humbly certify to your Lordship, that the said *John Thomas* being so declared a bankrupt, the major part of the commissioners by the said commission authorised, pursuant to the directions of the acts of parliament made in the fifth year of the reign of his late majesty king *George II.* intituled, "An Act to prevent the committing of frauds by bankrupts," did cause due notice to be given and published in the *London Gazette* of such commission being issued, and of the times and place of three several meetings of the said commissioners within 42 days next after such notice (the last of which meetings was appointed to be on the forty-second day), at which time the said *John Thomas* was required to surrender himself to the said commissioners named in the said commission or the major part of them, and to make a full disclosure and discovery of his estate and effects, and the creditors of the said *John Thomas* were desired to come prepared to prove their debts and to assent to or dissent from the making this certificate. And we further humbly certify to your Lordship that such three several meetings of the major part of the commissioners by the said commission authorised, were had pursuant to such

such notice so given and published, and that at one of those meetings the said *John Thomas* did surrender himself to the major part of the said commissioners by the said commission authorised, and did sign and subscribe such surrender, and did submit to be examined from time to time upon oath by and before the major part of the said commissioners by the said commission authorised, and in all things to conform to the several statutes made and now in force concerning bankrupts, and particularly to the said act made in the fifth year of his late Majesty's reign. And we further humbly certify to your Lordship, that at the last of the said three meetings the said *John Thomas* finished his examination before the major part of the said commissioners by the said commission authorised, according to the directions of the said last mentioned act, and upon such his examination made a full disclosure and discovery of his estate and effects, and in all things conformed himself to the several statutes made and now in force concerning bankrupts, and particularly according to the directions of the said statute made in the fifth year of his late Majesty's reign, and there doth not appear to us any reason to doubt of the truth of such discovery, or that the same is not a full discovery of all the estate and effects of the said *John Thomas*. And we further humbly certify to your Lordship that the creditors whose names or marks are subscribed to this certificate, are full four parts in five in number and value of the creditors of the above named *John Thomas*, who are creditors for not less than 20 $\frac{1}{2}$ respectively, and who have duly proved their debts under the said commission; and that it doth appear to us, by due proof by affidavit in writing, that such several subscribing creditors, or some person by them respectively duly authorised thereunto, did, before our signing hereof, sign this certificate, and testify their consent to our signing the same, and to the
said

General Form of Certificate

1784

said John Thomas having such allowance and benefit as
by the said last mentioned act are allowed to bankrupts
and as the said John Thomas being discharged from his
debts, in pursuance of the same act. In witness whereof
we have hereunto set our hands and seals this
day of _____ in the _____ year of the
reign of Sec. and in the year of our Lord 1784.

We the creditors of the above
named John Thomas, whose names
are here under subscribed,
do hereby certify and declare our
consent that the major part of the
commissioners, by the above men-
tioned commission authorized, may
sign and seal the certificate above
written; and that the said John
Thomas may have such allowance
and benefit as are given to bank-
rupts by the act of parliament
made in the fifth year of the reign
of his late majesty King George the
second, intitled, "An act to pre-
vent the committing of frauds by
"bankrupts," and be discharged
from his debts in pursuance of the
same act.

A. B.

(The creditors names)

C. D.

The messengers have printed forms of certificate, there-
fore the best way is to get a blank from them.

A. I.

Carroll

Certificate where Bankrupt surrenders under order for time.

As in last to to be on the forty second day inclusive; then continue thus: (But by your lordship's order bearing date the day of last, the time for the said bankrupt his surrendering and finishing his examination, was enlarged for forty-nine days) at which meeting the said John Thomas was required to surrender himself to the commissioners in the said commission named, or to the major part of them, and to make a full disclosure and discovery of his estate and effects; and the creditors of the said John Thomas were desired to come prepared to prove their debts, and to assent to or dissent from our making this certificate. And we further humbly certify to your lordship, that such several meetings of the major part of the commissioners, by the said commission authorized, were had, pursuant to such notice, and the order of your lordship; and that the said John Thomas, on the day of last, (being the forty-ninth day of the enlarged time, under your lordship's order as aforesaid) did surrender, &c. — and so go on, and conclude from the form of the other certificate, set out above, and at large.

Affidavit of seeing Creditors sign a Bankrupt's Certificate.

In the matter of John Thomas, a bankrupt.

John Knight, of, &c. gentleman, maketh oath that he this deponent was present, and did see T. C. for himself and

and Co. R. G. D. &c. (put in all the creditors your saw sign) ten of the creditors of the said bankrupt, severally subscribe their names at the foot of a certain instrument in writing, purporting to be a certificate under the hands and seals of the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued against the said *John Thomas*, that the said *John Thomas* the bankrupt had in all things conformed himself to the several statutes made and now in force concerning bankrupts, whereby they testify and declare their consent to the said commissioners signing the said certificate, and that the said bankrupt may have such allowance and benefit as are given to bankrupts by an act of parliament made and passed in the fifth year of the reign of his late majesty king *George* the second, intituled, "An act to prevent the committing of frauds by bankrupts," and be discharged from his debts in pursuance of the same act.

John Knight.

Sworn at the Public Office, the
day of before me

P. H.

If any person sign the bankrupt's certificate by virtue of a letter of attorney, such letter of attorney must be left at the bankrupt's office.

Affidavit to be made by the Bankrupt that his Certificate was fairly obtained.

John Thomas, of &c. against whom a commission of bankrupt hath been awarded and issued, maketh oath that the certificate, bearing date, &c. under the hands and seals

certifi

affidavit of the commissioners

of, &c. (the commissioners) three of the commissioners in the said commission named, whereby they have certified to the right honourable the lord chancellor of Great Britain, that he this deponent hath in all things conformed himself to the several statutes made and now in force concerning bankrupts, and particularly according to the directions of the acts of parliament made and passed in the first year of the reign of his late majesty king George the second, intitled "An act to prevent the committing of frauds by bankrupts," and the consent of all this deponent's creditors, who have signed their names at the foot of the said certificate, that the said commissioners might in the same, and that this deponent might have such allowance and benefit as are given to bankrupts by the said act, and be discharged from his debts in pursuance of the said act, were obtained fairly and without fraud.

At the Rolls-Court-House in Chancery Lane, 25th day of March, 1760.

Memorandum. The major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued against John Thomas, of, &c. met at the time and place above mentioned, and examined the proceedings under the said commission; and finding thereby, and by affidavit exhibited before them, that full four parts in five in number and value of all the creditors who have proved their debts under the said commission, amounting respectively to 20 $\frac{1}{2}$ and upwards, had signed their consent that the commissioners should execute a certificate to the right honourable the lord chancellor of Great Britain, for the said bankrupt's discharge, according to the late

late act of parliament for that purpose, they the said commissioners accordingly executed such certificate.

William Bampfden.

Henry Flower.

Henry Russell.

The certificate, together with the affidavit of seeing the creditors sign it, and also letters of attorney, (if any such there be) must be lodged with the secretary of bankrupts, who will thereupon give the messenger an authority to the printer of the Gazette, to insert an advertisement therein, signifying that the acting commissioners have certified to the great seal, that the bankrupt hath conformed, and that the certificate will be allowed and confirmed, unless cause shewn to the contrary, within twenty-one days from the date of the said advertisement.

If no cause is shewn within the twenty-one days against the allowance of the certificate, the lord chancellor will allow the same, by the following subscription on the said certificate:

day of

Whereas the usual notice hath been given in the *Lancaster Gazette*, of the

last, and name of the creditors of the

above named *John Thomas* have shewn any cause to the contrary: I do allow and confirm this certificate.

Thomas C.

CERTIFICATE

OF THE COMMISSIONERS OF BANKRUPTCY

*Certificate of Commissioners of Bankruptcy, in pursuance
of an order made by Lord Chancellor Apsley, 14th
Feb. 1774.*

To the Right Honourable Edward Lord Thurlow, Lord
High Chancellor of Great Britain.

We, as in the other certificate to certify to your lord-
ship, then instead of continuing in the words of that certi-
cate, go on thus: in pursuance of an order of the high court
of Chancery, bearing date on or about the 14th day of
February, which was in the year of our Lord 1774, hum-
bly certify to your lordship, that the said Francis Gibbons
was, at the time of his bankruptcy, in partnership with
James Atwood, in the trade or business of a shoemaker, and
that the said partnership is still subsisting; OR, that the
same was finally dissolved by mutual consent on the
day of now last past; OR, by the arti-
cles of agreement thereof expiring at that time. And we
further humbly certify to your lordship, that a separate
commission of bankrupt was awarded and issued before the
issuing of the present commission, and is now depending
and in prosecution against the said Francis Gibbons. And
we further humbly certify to your lordship, that the said
Francis Gibbons, on or about the day of
obtained his certificate duly allowed
and confirmed under the said separate commission; OR,
that the said Francis Gibbons was duly discharged as an in-
solvent debtor under the statute of the
year of the reign of his present Majesty, intituled "An act
for the relief of insolvent debtors," in pursuance and
according

according to the directions of the said act. In witness, &c.
as in the former certificate.

*Summons to compel a person to attend, who refused to
be examined on a Commission.*

By virtue of a commission of bankrupt awarded and issued against John Thomas, of, &c. you and every of you, to whom this our summons is directed, are hereby commanded and required, personally to be and appear before us, whose names are hereunto subscribed, or the major part of the commissioners, in the said commission named and authorised, on sight hereof, at Serle's Coffee-house, Lincoln's Inn, at six o'clock in the evening, then and there to be examined, by virtue of the said commission, and the several statutes therein mentioned; and hereof you are not to fail at your peril. Given under our hands this day of June, 1784.

William Bumpstead.

Henry Hunter.

Henry Russel.

To, &c.

An examined copy of the above summons must be personally delivered to the witnesses respectively by the messenger, or left by him at their respective lodgings, or at their last and usual places of abode: if the witnesses do not attend, upon being duly served, the commissioners (on oath being made before them of the service) will execute a warrant for their commitment.

Deposition of the due service of the Statute

*David Cadell, of the one of the messengers to the honourable the commissioners of bankrupt, being sworn, &c. upon his oath saith, that he this examinant did, on the 14th day of this instant June, 1790, deliver with the firmament hereunto annexed, by having with *James Chapman*, at the dwelling house of the said *Edward Fish*, a true and examined copy of the said forsworn, and at the same time showing hereto original signatures subscribed with the respective hand writings of the major part of the commissioners, in and by a commission of bankrupt awarded and issued, and now in protection, against *John Thomas*, late of London. And this examinant further saith, that the said *J. C.* is servant to the said *E. H.* as he informed this examinant, and which information he believes to be true. And this examinant further saith, that he hath since seen the said *J. C.* who assured him, that he had delivered the said copy to the said *E. H.* which last information this examinant also believes to be true; and this examinant further saith, that the above mentioned subscription was wrote by the said *Edward Fish* in the presence of this examinant.*

D. C.

Warren

Whereas his majesty's commission under the great seal of Great Britain, bearing date the 25th day of June last past, at Westminster, grounded on the several statutes made and now in force concerning bankrupts, hath been awarded and issued against John Thomas, of, &c. directed to us who have hereunto subscribed our names, and set our seals, and to Henry Cowper, Esq. and Richard Hargrave, Gentleman; and we being the major part of the commissioners therein named, having begun to put the said commission into execution, and it appearing to us that the act of bankruptcy intended to be proved against the said John Thomas, is his lying in prison two months upon an arrest for debt; and that J. W. officer to the sheriff of Middlesex, was the person who arrested the said John Thomas, on which arrest the said John Thomas lay in prison two months as aforesaid; and that the said J. W. was duly summoned to appear before us, but hath made default, in contempt of our authority, and of the statutes, and also of the commission aforesaid, and the authority thereby to us given: these are therefore to will, require, and authorize you, and every of you, immediately upon receipt hereof, to apprehend, arrest, and take into your custody the body of the said J. W. and him safely to convey to his majesty's gaol of Newgate, and him there to deliver to the keeper of the said gaol, who is hereby required and authorized by virtue of the said commission, and statutes aforesaid, to receive the said J. W. into his custody, and him safely to keep

keep

keep and detain without bail or mainprize, until he shall submit himself to be examined according to the true intent of the statutes, and be thence delivered by due course of law; and for your so doing, this shall be your sufficient warrant. Given under our hands and seals the day of June, in the year of our Lord, 1784.

To David Cadell, our messenger, or Robert Brown, his assistant, and to Richard Alderson, keeper of his Majesty's goal of Newgate, on to his deputy there,

William Bumpstead. (L. S.)
Henry Hunter. (L. S.)
Henry Ruffel. (L. S.)

Warrant to commit a witness who refused to sign his examination.

Whereas a commission of bankrupt, under the great seal of Great Britain, bearing date at Westminster the day of June instant, grounded upon the several statutes made and now in force concerning bankrupts, hath been awarded and issued against John Thomas, of, &c. directed unto William Bumpstead, Henry Hunter, Henry Ruffel, and Henry Cowper, Esquires, and Richard Hargrave, Gentleman, thereby giving full power and authority to the said commissioners, four or three of them, to proceed according to the several statutes made and now in force concerning bankrupts.

bankrupts. And whereas *Edward Holt*, of *London*, merchant, was, on the _____ day of *June* instant, present at a meeting before us whose hands and seals are hereunto subscribed and set, being the major part of the commissioners named and authorised in and by the said commission; and the said *Edward Holt* being sworn and examined by us, the major part of the said commissioners in the said commission named, touching the trade and dealings of the said *John Thomas*, and also concerning several acts of bankruptcy supposed to be committed by the said *John Thomas*; which examination of the said *Edward Holt* was reduced and taken down in writing, and such writing was read over to him (and to the wording of which said examination, the said *Edward Holt* declared he had no reasonable objection); notwithstanding which the said *Edward Holt* refused to sign or subscribe such examination, so reduced and taken down in writing, as aforesaid, though often required by us so to do: We therefore whose hands and seals are hereunto subscribed and set, being the major part of the commissioners in the said commission named, do hereby will, require and authorise you, immediately to take into your custody the body of the said *Edward Holt*, and him safely to convey to his majesty's prison of the *Fleet*, and him there to deliver to the warden of the said prison, who is hereby required and authorised to receive the body of the said *Edward Holt* into his custody, and him safely to detain, without bail or mainprize, until he shall submit himself to the commissioners in the said commission named, or the major part of them, and shall sign or subscribe the examination aforesaid, according to the true intent and meaning of the said statutes in the said commission, or be otherwise delivered by due course of law, for which this shall

shall be your sufficient warrant. Given under our hands
and seals this *day of June, 1780.*

To *Daniel Cadell,* *William Dunsford.* (L. S.)
our messenger, &c. *Henry Hunter.* (L. S.)
Henry Russell. (L. S.)

**Commitment of a Witness for refusing to be sworn
and answer interrogatories.**

Whereas a commission of bankrupt, under the great
seal &c. (as before) And whereas *Edward Hall* was sus-
pected to have embezzled, concealed, and secretly disposed
of a great part of the goods and estate of the said *John
Thomas*, and was duly summoned to appear before us, who
made default in contempt of our authority, but at length
appeared before us, we then sitting in the ex-
ecution of the said commission, did obstinately refuse to
be sworn, though often required by us so to be, and also
obstinately refused to make answer to such interrogatories
and questions, as we by virtue of the said commission
required him to answer unto, concerning the said *John
Thomas*, and his estate, according to the true meaning of
the said statutes, for the discovering the estate of the said
John Thomas, in contempt of the said statutes, and of the
commission aforesaid, and the authority thereby to us given.
We therefore, &c.

**Certificate of a Creditor's having proved a Debt, for
the purpose of his seeing a Bankrupt in custody.**

We whose names are hereunto subscribed, being the ma-
jor part of the commissioners named and authorised in and

by

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cxi

by a commission of bankrupt awarded and issued, and now
in prosecution against *John Thomas*, of, &c. do hereby
certify that *Charles Harcourt*, of, &c. hath proved a debt
under the said commission. Witness our hands this 10th day
of June, in the year of our Lord, 1780.

Witness
John Knight. *William Bumpstead.*
Henry Hunter.

Henry Russell.

*Certificate for a Judge or Justice of Peace to grant
his Warrant for apprehending and committing a
Bankrupt.*

In the matter of *John
Thomas*, bankrupt.

We whose names are hereunto subscribed, and *Jesse*, &c.
do hereby certify, that a commission of bankrupt, under
the great seal of Great Britain, grounded upon the several
statutes made and now in force concerning bankrupts,
bearing date at Westminster, the 10th day of
June instant, hath been awarded and issued against *John
Thomas*, of, &c. and directed to *William Bumpstead*, *Henry
Hunter*, *Henry Russell*, and *Henry Cooper*, Esquires, and
Richard Hargrave, Gentleman, thereby giving full power
and authority to four or three of them, to execute the same.
And we do further certify, that we being the major part of
the commissioners, by the said commission authorized, have
proceeded in the execution of the said commission, and have
found, upon the due examination of witnesses, and other
good proof upon oath before us had and taken, that the
said *John Thomas*, before the date and suing forth of the

said commission, became bankrupt, to all intents and purposes, within the compass, true intent, and meaning of the several statutes made and now in force concerning bankrupts, or within some or one of them, before the date and suing forth of the said commission. Given under our hands and seals at Serle's Coffee-house, Lincoln's Inn, in the county of Middlesex, this day of June, in the year of our Lord 17

Witness

John Knight.

William Bumpstead. (L. S.)

Henry Hunter. (L. S.)

Henry Russel. (L. S.)

The execution of this certificate must be proved by the subscribing witness before the judge or justice, previous to his granting his warrant.

Advertisement by the Assignees for a meeting of the Creditors.

The creditors who have proved their debts under a commission of bankrupt awarded and issued against John Thomas, of, &c. are desired to meet the assignees of the said bankrupt's estate, on the day of next, at of the clock in the at in order to assent to or dissent from the said assignees commencing, prosecuting, or defending any suit or suits at law or in equity, for recovery of any part of the said bankrupt's estate and effects; and also to their compounding, submitting to arbitration, or otherwise agreeing, any matter or thing relating thereto, and on other special affairs.

Memorandum

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Memorandum of the Meeting of Creditors.

At, &c.

Be it remembered, that we whose names are hereunto subscribed, being the major part in value of the creditors who have proved our debts under the commission of bankrupt awarded and issued against *John Thomas*, present at the place and time above mentioned, pursuant to an advertisement in the *London Gazette*, of the _____ day of

last, in order to assent to or dissent from the assignees chosen under the said commission, their commencing, prosecuting, or defending any suit or suits at law or in equity, for recovery of any part of the said bankrupt's estate or effects; and also to their compounding, submitting to arbitration, or otherwise agreeing any matter or thing relating thereto, and on other special affairs. And also, pursuant to the statute in such case lately made and provided, do consent and agree that the assignees under the said commission shall [*here set out what resolutions the creditors came to, and what directions they give the assignees.*]

Sales before the Commissioners.

As the estates of bankrupts are sometimes sold before the commissioners, the following precedents may be found useful:

Advertisement for the London Gazette.

To be sold by auction, before the major part of the commissioners named and authorised in and by a commission of bankrupt

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order

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bankrupt awarded and issued, and now in prosecution against John Thomas, of, &c. in the Gazette of the City of London, on Thursday the 1st day of July next, between the hours of four and six o'clock in the afternoon [Here set out a particular description of the premises intended to be sold.] For further particulars consult of [the clerk to the commission.]

On the day of sale, having given each of the commissioners particular and conditions of sale, they proceed, as is usual in such cases, five minutes is allowed for bidding on each lot, and whenever a person bids, he must sign his bidding, which the sale is over, a memorandum is signed by the commissioners.

Memorandum on Sale of an Estate before the Commissioners.

At, &c,

Memorandum, That we whose names are hereunto subscribed, being the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued, and now in prosecution against John Thomas, of, &c. met the day and year, and at the place above-said, pursuant to notice in the London Gazette, for sale of the said bankrupt's real estate, consisting of [Here set out a particular description of what is intended to be sold, according to the advertisement.]

Memorandum, The above estate was put up to sale at the sum of _____ when John _____ of London, merchant, bid the sum of _____ for the said estate, and no person

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person (though there were several bidders) bidding more for the same, we declare the said John Dobson purchaser of the said estate, at the said sum of

William Bumpstead.

Henry Hunter.

Henry Russell.

If there should happen to be no bidder, the commissioners will sign the following memorandum.

Memorandum. That the above estate was put up to sale at the sum of

and we the said commissioners attending from the hours of four o'clock to six in the afternoon, and no bidders appearing to bid for the same, the bidding was thereupon dismissed, and the sale adjourned to a future day.

William Bumpstead.

Henry Hunter.

Henry Russell.

Notice from Commissioners to Assignees to make a Dividend.

You are hereby required to attend us, whose names are hereunto subscribed, or the major part of the commissioners named and authorized in and by a commission of bankrupt awarded and issued, and now in prosecution against John Thomas, of, &c. on the day of at the Guildhall of the city of London, to shew cause why notice has not been given by you for making a dividend of the estate and effects of the said bankrupt, according to the act of parliament in that case made and provided, which if

you fail of doing, a meeting will be forthwith appointed by us, whose names are hereunto subscribed, or the major part of the said commissioners, in and by the above commission named and authorised, for you to produce your receipts and payments touching the same, and to make a dividend of such part of the said estate and effects, as shall appear to be remaining in your hands. Dated this day of 1780.

To Thomas Hopkins and John Simpson, assignees of the estate and effects of John Thomas, bankrupt.

William Bumpstead.

Henry Hunter.

Henry Russell.

Advertisement of a Dividend.

The commissioners named and authorised in and by a commission of bankrupt awarded and issued, and now in prosecution against John Thomas, of, &c. intend to meet on the day of next, at o'clock in the noon, at Guildhall, London, in order to make a dividend of the estate and effects of the said bankrupt, when and where the creditors, who have not already proved their debts under the said commission, are hereby required to come prepared to prove the same, or they will be excluded the benefit of the said dividend.

Order of Dividend by Admission.

At, &c.

Be it remembered, that we whose names are hereunto subscribed, being the major part of the commissioners named

and authorised, in and by a commission of bankrupt, awarded and issued, and now in prosecution, against *John Thomas* of, &c. having met together the day and year, and at the place above-mentioned, in order to make a dividend of the estate and effects of the said bankrupt, pursuant to notice given in the *London Gazette* for that purpose, and it being admitted by *Thomas Hopkins* and *John Simpson* assignees of the estate and effects of the said bankrupt, that they now have sufficient money in their hands to pay all the creditors of the said bankrupt, who have already proved or claimed debts under the said commission, 14 s. in the pound for every pound so proved or claimed. We do therefore, pursuant to the said admission, and at the desire of the creditors, order and direct that the said assignees do forthwith pay and divide unto and amongst all and every the creditors of the said bankrupt, who have proved their debts, and the claimants when they shall have substantiated their claims by proof under the said commission, 14 s. in the pound in proportion to their several and respective debts.

William Bumpstead.

Henry Hunter.

Henry Ruffel.

Letter of Attorney to receive the Statutable Allowance of a Bankrupt.

Know all men by these presents, that I *John Thomas*, late of, &c. have made, ordained, constituted, and appointed, and by these presents do make, ordain, constitute and appoint, *James Marriott*, of *Long-Acre*, in the county of *Middlesex*, coach-maker, my true and lawful attorney, for me, and in my name, place, and stead; but for his own proper use and be-

nefit only ; to ask, demand, sue for, and receive, of and from
 the present assignee or assignees, or any future assignee or as-
 signees, of my bankrupt estate or effects, or whom else these
 presents do, shall, or may concern, all and every such sum
 and sums of money as now is or are, or which shall here-
 after become due or payable to me the said *John Thomas*,
 for all or any allowance or allowances I may be intitled to
 out of the neat produce of the said bankrupt estate or ef-
 fects, by act of parliament or otherwise howsoever, as a
 certificated bankrupt, and on payment of the said mo-
 ney, or any of them, or any part thereof, for me, and in
 my name to sign, seal and deliver, all and every such good
 and sufficient receipts, acquittances, releases and discharges,
 to the said assignee or assignees, as shall and may be lawful, fit,
 and convenient to be given, and generally to do all and every
 such other and further lawful act and deed, matter or thing, for
 the better executing and discharging the power and authority
 hereby given, as fully and amply, to all intents and purposes,
 as I myself might or could do, if personally present and did
 the same ; hereby ratifying and confirming all and whatso-
 ever my said attorney shall or may lawfully do, or cause to
 be done, in and about the said premises, for the better exe-
 cuting the purposes aforesaid by virtue of these presents.
 In witness whereof, I, the said *John Thomas*, have here-
 unto set my hand and seal this *day of November*,
 in the year of our Lord 178

Sealed and delivered (being
 first duly stampd) in the
 presence of

N. B. There must be an affidavit of the execution of
 this letter of attorney.

Order

Order for a further dividend.

At, &c.

Be it remembered, That we whose names are hereunto subscribed, being the major part of the commissioners named and authorised, in and by a commission of bankrupt, awarded and issued, and now in prosecution against *John Thomas* of, &c. having met together the day and year, and at the place above-mentioned, in order to make a further dividend of the estate and effects of the said bankrupt, pursuant to notice given in the *London Gazette* for that purpose; and it appearing to us that by an order of dividend made the day of, &c. of the last, the assignees under the said commission admitted, that they then had sufficient money in their hands, to pay all the creditors of the said bankrupt, who had proved or claimed debts under the said commission, the sum of 14s. in the pound; for every pound so proved or claimed; the said commissioners did therefore, pursuant to the said admission, and at the desire of the creditors, order and direct that the assignees should pay and divide unto and amongst all and every the creditors of the said bankrupt, who had proved their debts, and unto the claimants, when they should have proved their claims under the said commission, the sum of 14s. in the pound, in proportion to their several and respective debts; and it being admitted by the said assignees, that they have now sufficient money in their hands, to pay all the creditors not included in the former dividend, and who have at this sitting proved their debts under the said commission, the like dividend of fourteen shillings in the pound, upon their several and respective debts, and also sufficient to pay all the creditors of

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the said bankrupt, who have already proved or claimed debts under the said commission, the further sum of 3 s. in the pound, over and above the sum of 14 s. in the pound, already divided under the said commission, for every pound so proved or claimed. We do therefore, pursuant to the said admission, and at the desire of the creditors, order and direct that the said assignees do forthwith pay and divide, unto and amongst all the creditors not included in the former dividend, the sum of fourteen shillings in the pound, and unto and amongst all and every the creditors of the said bankrupt, who have proved their debts, and unto the claimants, when they shall have proved their claims under the said commission, 3 s. in the pound, in proportion to their several and respective debts.

William Bumpstead.

Henry Hunter.

Henry Ruffell.

The above printed in *Italics* is to be inserted *only* when creditors prove debts for whose dividends no reservation hath been made in former calculations, and when the assignees have sufficient in their hands to pay such subsequent creditors former dividends without disturbing the dividend already made.

Order for a further or final dividend, not by admission.

At, &c.

Be it remembered, that we whose names are hereunto subscribed, being the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and

and issued and now in prosecution against *John Thomas of, &c.* having met together the day and year and at the place above-mentioned, in order to make a further (final) dividend of the estate and effects of the said bankrupt, pursuant to notice in the *London Gazette* for that purpose given; and it appearing to us, that by an order of dividend made the *day of* last, the assignees under the said commission admitted, that they then had sufficient money in their hands to pay all the creditors of the said bankrupt, who had proved or claimed debts under the said commission, the sum of 14*s.* in the pound, for every pound so proved or claimed; the said commissioners did therefore, pursuant to the said admission, and at the desire of the creditors, order and direct, that the assignees should pay and divide unto and amongst all and every the creditors of the said bankrupt who had proved their debts, and unto the claimants when they should have proved their claims under the said commission, the sum of 14*s.* in the pound, in proportion to their several and respective debts; and it also appearing to us, that by an order of dividend made *day of* last, the assignees under the said commission admitted, that they then had sufficient money in their hands to pay all the creditors of the said bankrupt, who had proved or claimed debts under the said commission, the further sum of 3*s.* in the pound, over and above the sum of 14*s.* in the pound already divided under the said commission for every pound so proved or claimed; the said commissioners did therefore, pursuant to the said last admission, and at the desire of the creditors, order and direct, that the assignees should pay and divide unto and amongst all and every the creditors of the said bankrupt, who had proved their debts; and unto the claimants, when they should have proved their claims under

der the said commission; the further sum of 3s. in the pound, in proportion to their several and respective debts; and, it also further appearing to us, by the account of *Thomas Hopkins*, one of the said assignees, this day exhibited to us upon oath, (*John Simpson*, the other assignee, not having or received any part of the said bankrupt estate and effects, as also appears to us upon the oath of the said *John Simpson*;) that the sum total of the said bankrupt estate since got in and received by them, doth amount to the sum of which being added to the sum of make together the sum of

And it also appearing to us, by the account of the said *Thomas Hopkins*, and also by a certificate of *John Hett*, Esq. one of the masters of the high court of Chancery, bearing date the day of 17 of his having settled and taxed a bill of fees and disbursements of *John Knight*, clerk to the said commission, at the sum of and by another certificate of *H. M.* Esq. another of the masters of the said court of Chancery, bearing date the day of 17 of his

having settled and taxed another bill of fees and disbursements of the said *John Knight*, under the said commission, including the costs of several actions at law to the sum of that the said *Thomas Hopkins* hath paid, laid out and expended the sum of which being deducted from the said sum of reduces the same to the sum of which said sum now remains in the hands of the said *Thomas Hopkins* to be divided. And it appearing to us that the debts proved under the said commission, including the debts that have been this day proved to the amount of do make together the sum of

Now
we

we do order and direct, that the said dividends of
and shillings in the pound shall be paid to
such of the said bankrupt's creditors who have this day
proved their debts, which will amount to
and after payment thereof there will remain in the hands of
the said Thomas Hopkins, the further sum of
to be divided among the creditors of the said bankrupt.
And we do order and direct, that, out of the monies so re-
maining in the hands of the said Thomas Hopkins, as afore-
said, a further (final) dividend of _____ in the
pound be paid to all the bankrupt's creditors who have al-
ready proved their debts and sought relief under the said
commission, in proportion to their several debts, which said
dividend of _____ in the pound amounts
to the sum of _____ as we compute the same, and
after the payment thereof, there will remain in the hands of
the said Thomas Hopkins the sum of _____ and no more,
subject to our further order, [or which he is to retain towards
answering future charges, and making a further dividend.]

William Humphreys.

Henry Hunter.

Henry Ruffel.

**Master's certificate of taxing the Solicitor's Bill of
Fees and Disbursements.**

April, 1780.

In the matter of John Thomas,
a bankrupt.

I do hereby certify, that pursuant to an act of parliament
passed in the fifth year of the reign of his late majesty king
George the Second, intituled, 'An Act, &c.' I have been
attended by Mr. _____ the clerk employed
under

under the commission awarded against the said bankrupt
and by Mr. [Name] on behalf of the
assignees under the said commission, and in their presence I
have considered of a bill of fees and disbursements brought
before me on account of several proceedings had under the
said commission, amounting in the whole to the sum of
[Sum] which I have thought fit to
settle and adjust, at the sum of [Sum]

John Hatt.

July 1780

Exhibited to us under the commission against John
Thomas

William Bumpstead.

Henry Hunter.

Henry Russel.

Order for a Dividend under a joint Commission,
wherein an Order had been obtained, for taking an
Account of and dividing the Bankrupt's separate
Estate.

At, &c.

Whereas we whose names are hereunto subscribed, be-
ing the major part of the commissioners named and autho-
rised in and by a commission of bankrupt, awarded and is-
sued and now in prosecution against John Thomas and Wil-
ham West of, &c. did meet the day and year and at the place
abovesaid, pursuant to notice in the London Gazette, in order
to make a dividend of the joint and separate estate and
effects of the said bankrupts, and we have in obedience to
an order of the right hon. the Lord High Chancellor of
Great Britain, taken an account of the joint and separate
estates

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estates and effects of the said bankrupts, and it appears to us that the total of the joint debts proved and claimed under the said commission, amounts to the sum of *1060 10s 11d* and that the total of the separate debts of the said *W.* so proved and claimed under the said commission, amounts to the sum of *1060 10s 11d* and that the total of the separate debts of the said *John Thomas*, so proved and claimed under the said commission, by virtue of the said order, amounts to the sum of *1060 10s 11d* and that the clear sum in the hands of *John Partridge* and *Charles Dennis*, the assignees of the said bankrupt's joint estates and effects amounts to the sum of *1060 10s 11d* and of the separate estate of the said *John Thomas*, to the sum of *1060 10s 11d* and of the separate estate of the said *William West* to the sum of *1060 10s 11d*. We do therefore order, that the sum of

part of the said sum of

be distributed and paid to the respective joint creditors of the said bankrupts, who have already duly proved their debts under the said commission, in manner following, viz. at the rate of 6s. 9d. in the pound to *Thomas Hopkins*, in respect of a debt of *1060 10s 11d* proved by him this day, being the amount of the former and present dividend; and in respect of all his other debts, after the rate of 1s. and 3d. in the pound; so that the sum of *1060 10s 11d* after payment of the said creditors, will remain in the hands of the said assignees of the said joint estate and effects. And we do further order that the sum of *1060 10s 11d* part of the said sum of *1060 10s 11d* be distributed and paid to the respective separate creditors of the said *John Thomas*, who have duly proved their debts under the said commission, in pursuance of the said order, after the rate of eleven shillings in the pound; so that the sum of *1060 10s 11d* after

after payment of the said dividend, will remain in the hands of the said assignees of the separate estate of the said *John Thomas*: And we do further order, that the sum of *£100* part of the said sum of *£100* be distributed and paid to the separate creditors of the said *William West* who have already duly proved their debts under the said commission in pursuance of the said order, after the rate of three shillings in the pound: so that the sum of *£100* after payment of the said dividend, will remain in the hands of the said assignees, of the separate estate of the said *William West*.

William Bumpstead.

Henry Hunter.

Henry Ruffel.

If the assignees cannot personally attend the commission on the day by them appointed for making a dividend, they must make an affidavit to the following effect:

Thomas Hopkins, of, &c. and *John Simpson*, of, &c. assignees under a joint commission of bankrupt awarded and issued, and now in prosecution against *John Thomas* and *William West*, of, &c. and copartners, make oath. And first this deponent *Thomas Hopkins* for himself saith, that the two sheets of paper hereunto annexed, and respectively signed by him this deponent, do contain a full and true account of all his this deponent's receipts and payments, touching the estate and effects of the said bankrupts, as well joint as separate, under the said commission: and this deponent further saith, that the several sums therein charged, to have been allowed, paid and expended, have been really and bona fide allowed, paid and expended, in manner and for the purposes

purposes therein mentioned. And this deponent *Thomas Hopkins* for himself saith, that the paper writing hereunto also annexed, and signed by him this deponent, doth contain a full and true account of all his this deponent's receipts and payments, touching the estate and effects of the said bankrupts, as well joint as separate, under the said commission. And this deponent further saith, that the several sums therein charged, to have been allowed, paid and expended, have been really and *bona fide* allowed, paid and expended in manner and for the purposes therein mentioned.

Sworn, &c.

Thomas Hopkins.

John Simpson.

The dividend being declared by the commissioners, it will save the assignees a great deal of trouble in the payment of it, if the solicitor computes the dividends, which computation may be intituled,

A list of the debts proved under the commission of bankrupt against *John Thomas, of, &c.* with the amount of each creditor's dividend, on the sum of _____ being the sum ordered to be divided amongst the said creditors, after the rate of _____ shillings in the pound,

Names of the creditors.	Debts proved.	Dividends.
-------------------------	---------------	------------

The expence of computing the dividends by the solicitor, and preparing and copying the above list, will be allowed in the assignees accounts.

If

If any bond, note, or other security was not exhibited by the creditor, at the time of his proving his debt, the assignees ought not to pay such creditor his dividend till such bond, &c. be produced; but then it ought to have been so previously notified by a memorandum on the margin of the creditor's deposition of debt.

It is usual for the assignees to give notice of the time and place they intend to pay the dividend; if by the assignees, the solicitor signs an authority for that purpose, to the following effect, viz.

Gentlemen,

Please to pay *Mary Combes* the sum of
being her dividend of
shillings in the pound on her debt of
proved under the commission of bankrupt against *Francis Gibbons, of, &c.*
Yours, &c,
To Messrs. *Partridge and John Knight.*
Dennis, said bankrupt's
assignees.
14 July, 1780.

The assignees, upon receiving this authority, pay the creditor, and take a receipt in a book to the following purport, viz.

Received this day of July, 1780, of
Messrs. *Partridge and Dennis*, assignees of the estate and effects of *Francis Gibbons, of, &c.* bankrupt, the sum of
being a dividend of
shillings in the pound, on my debt of
proved under the said commission.

Mary Combes.

Petition

Appendix of Petitions.

1784

Petition for the Introlment of Proceedings, under Commissions of Bankrupt.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble Petition of Thomas Hopkins and John Simpson, assignees of the estate and effects of John Thomas bankrupt,

Sheweth,

That on or about the day of June, 1784, a commission of bankrupt was awarded and issued against John Thomas, of, &c. and your petitioners were duly chosen assignees of his estate and effects, and the major part of the commissioners in the said commission named and authorised, have executed an assignment of the personal estate, and also a bargain and sale of the real estate of the said bankrupt, to your petitioners accordingly.

That the said bankrupt was seised of or intitled unto him and his heirs, of and in the equity of redemption of a freehold estate in which has been sold, and, in order to complete the sale thereof, your petitioners are advised that it is proper and necessary, that several parts of the proceedings under the said commission should be introlled.

Your petitioners therefore most humbly pray your lordship, that the stile and title of the proceedings of the commissioners under the said commission, the memorandum of the said commissioners taking the usual oath, the deposition of the

the petitioning creditor's debt, together with the commissioner's adjudication, or declaration of the act of bankruptcy, of the said *Francis Gibbons*, and the memorandum of the choice of your petitioners to be assignees of the estate and effects of the said *Francis Gibbons*, and your petitioner's acceptance of the trust thereof, may be entered of record, pursuant to the act of parliament in that case made and provided.

And your petitioners shall ever pray, &c.

Petition for the Involvement of the Commissioners Certificate of the Bankrupt's Conformity.

To the Right Honourable the Lord High Chancellor of Great Britain,

The humble petition of *John Thomas*, bankrupt, Sheweth,

That on or about the day of 1780, a commission of bankrupt issued against your petitioner, whereupon he was duly declared bankrupt.

That your petitioner has obtained his certificate, under the hands and seals of the major part of the commissioners, acting in the execution of the said commission, whereby they have certified, that your petitioner hath in all things conformed himself to the several acts of parliament made and now in force concerning bankrupts, and four fifths in number and value of the creditors of your petitioner, who

proved

GRANT OF CERTIFICATE

1821

proved their debts under the said commission, have signed their names at the foot of the said certificate, testifying their consent that your petitioner may have such allowance and benefit as are given to bankrupts, and the same certificate hath been allowed and confirmed by your lordship.

That your petitioner is desirous, that his said certificate, so confirmed as aforesaid, may be entered of record.

Your petitioner therefore most humbly prays your lordship, that his said certificate, together with your petitioner's affidavit of having obtained the same fairly and without fraud, may be entered of record, pursuant to the act of parliament in that behalf made and provided.

And your petitioner, &c.

Petition for a Renewed Commission

To the Right Honourable Edward Lord Thurlow, Baron Thurlow, of Affield, in the county of Suffolk, Lord High Chancellor of Great Britain.

The humble petition of Thomas Hopkins, of, &c. a creditor of John Thomas, bankrupt;

Sheweth,
That upon application of your petitioner, a commission of bankrupt dated the _____ day of _____ in the _____ year of the reign of his late majesty _____ King

King George the second, was awarded against John Thomas, or, &c. directed unto, &c. whereupon the said John Thomas was declared bankrupt, and several proceedings had been thereon had.

That by reason of the death of the said the said commission cannot be further proceeded upon, without being renewed.

Your petitioner therefore humbly prays your lordship, that the said commission may be renewed.

And your petitioner shall ever pray, &c.

This petition is lodged at the secretary of bankrupts office by the solicitor, and is not annexed (as the original petition) to the commission.

Renewed Commission on Death of Commissioners.

George the Third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To our trusty and well beloved William Bumphead, Henry Hunter, Henry Russel, Henry Cooper, Esquires, and Richard Hargrave, Gentleman, greeting. [Here recite the original commission, to "diligence and effect;" then add] Now, forasmuch as Thomas Hopkins, of, &c. by his humble petition, exhibited to our lord high chancellor of Great-Britain, for the reasons therein contained, prayeth that the said commission might be renewed, whereunto we graciously inclining, do by these presents name, assign, appoint, constitute, and ordain you our special commissioners, hereby giving

giving full power and authority unto you, four or three of you to proceed according to the statutes and all other Statutes in force concerning bankrupts: not only concerning the said bankrupt, his body, lands, tenements, freehold and customary goods, debts and other things whatsoever; but also concerning all other persons who, by concealment, elusion, or otherwise do or shall offend touching the premises, or any part thereof, contrary to the true intent and meaning of the said Statutes: and to do and execute all and every thing and thing whatsoever, as well for and towards satisfaction and payment of the said creditors, as towards and for all other intents and purposes, according to the ordinance and provision of the same Statutes; willing and commanding you, four or three of you, to proceed to the execution and accomplishment of this our commission, according to the true intent and meaning of the same Statutes, with all diligence and effect, as our special trust is in you reposed. Witness ourself at *Westminster*, the

10 day of *January* in the 10 year of our reign. *J. York.*

Petition to supersede Commission.

In the matter of *John Thomas*, bankrupt.

To the right honourable the lord high chancellor of Great Britain.

The humble Petition of the said *John Thomas*, the bankrupt.

That a commission of bankrupt, under the great seal of Great Britain, bearing date at *Westminster*, the

SUMMARY OF PURPOSES:

Instead of this allegation, you may insert the following one, viz. That the several persons whose names are hereunto subscribed, are all the creditors of your petitioners, who have proved or claimed and deposited the said petition, as by the certificate of the said court of record hereunto annexed appears, and in all the said certificates of said petitioners are subscribing that the said commission should be superseded, and for that purpose have signified their respective assents in writing to the judges of said petition, as the fact hereof was by said commission duly ascertained.

the 1780.
Filing the certificate of the commissioners, and the affidavit of John Knight, be it as prayed.

And your petitioner shall ever pray,
&c.

We whose names are hereunder subscribed, do hereby most humbly testify and declare our consents to the prayer of the above petition, in case your lordship shall be pleased to grant the same. Witness our hands this 22nd day of July, 1789.

Certificate

Commissioners of the Court of Bankruptcy, to the Great Seal, of the Kingdom of Great Britain, under the Commission, to supersede the same.

In the matter of **John Thomas**, bankrupt. To the right honourable the lord high chancellor of Great Britain.

We whose names are hereunto subscribed, being the major part of the commissioners named and authorised in and by a commission of bankrupt, bearing date at *Westminster*, the *day of June, 1780*, awarded and issued against *John Thomas* of, &c. directed to us *William Burrystead, Henry Hunter, and Henry Russell, Esqrs.* together with *Henry Dwyer, Esq.* and *Richard Hargrave, Gent.* do humbly certify to your lordships that we the major part of the said commissioners on the said day of *June*, having begun to put the said commission into execution against the said *John Thomas*, did find, that the said *John Thomas* did, before the date and living forth of the said commission, become bankrupt within the intent and meaning of the several statutes made, and now in force, concerning bankrupts, some or one of them, and did therefore declare the said *John Thomas* bankrupt accordingly. And we the said commissioners do further certify to your lordships, that, &c. are the only creditors of the said *John Thomas*, who have proved debts under the said commission. And we the said commissioners do further humbly certify to your lordships, that we did meet pursuant to notice in the *London Gazette* for that purpose, on the *day of the said month of June*, for the proof of debts, and on the *day*

day

of the said month of June, for the

choice of assignees of the said bankrupt's estate and effects,
when no other creditor proved or claimed any debt under the
said commission, at either of the said sittings. Witness
our hands this day of July, in the year
of our Lord 1780.

William Dampford.

Henry Hunter.

Henry Raper.

Memorandum of the Commissioners serving the above

Commissioners of bankrupts
brother and sister, most humbly presenting that his lordship
to the said commission to be pleased to order that the said commission

Be it remembered, that we whose names are hereunto
subscribed, being the major part of the commissioners
named and authorized in and by a commission of bankrupt
awarded and issued, and now in possession against John
Thomas of London, set the day and year and at the place above-
said, and, at the instance of all the said bankrupt's creditors,
under the said commission, make our certificate, and thereby
certified to the right honourable the lord High Chancellor
of Great Britain, that we the said commissioners had de-
clared the said John Thomas bankrupt, and that the said, &c.
were the only creditors who had proved or claimed any
debts under the said commission. Witness our hands this

day of July, 1780.

William Dampford.

Henry Hunter.

Henry Raper.

*Affidavit of the seeing the Creditors sign Consent at
the Court of Petition to supersede the Commission
in the matter of*
John Thomas,
a bankrupt.

John Knight of, &c. maketh oath, that he this deponent
did, this day of July, 1780, see, &c. severally
sign their names to a consent in writing, subscribed to the
prayer of a petition of the said *John Thomas* of, &c. di-
rected and intended to be preferred to the Lord high chan-
cellor of Great Britain, most humbly praying that his lord-
ship would be pleased to order that the said commission of
bankrupt therein mentioned to have been awarded and
issued, and then in prosecution against the said *John Thomas*,
might be immediately superseded, and that a writ of *Super-
sedas* might forthwith issue for that purpose, or to that effect.
And this deponent further saith, that the names, &c. signed
and subscribed to the said consent in writing, are of the re-
spective proper hand-writing of the said *John Knight*,
Sworn, &c.

*George the Third, by the Grace of God, of Great Bri-
tain, France, and Ireland, King, Defender of the faith, and so
forth.* To our trusty and well beloved *William Bumpstead,*
Henry Hume, Henry Russel, Henry Couper, Esqrs. and
Richard Hargrave, Gent. greeting : Whereas we being in-
formed that *John Thomas* of, &c. using and exercising the
trade of merchandize, by way of bargaining, exchange, bar-
tering,

tering, cheyifance, seeking his trade of living by buying and selling, did become bankrupt within the several statutes made against bankrupts, to the intent to defraud and hinder Charles Jones of, &c. and others, his creditors, of their just debts and duties, to them due and owing; and we, finding the due execution of the several statutes made against bankrupts, did, by our commission under the great seal of Great Britain, bearing date at Westminster the day of in the year of our reign, name, assign, appoint, constitute, and ordain you our special commissioners, thereby giving, &c. [here recite the original commission to "diligence and effect," then add] Now forasmuch as the said John Thomas, the bankrupt, by his humble petition, exhibited to our lord high chancellor of Great Britain, for the reasons therein contained, prayed that the said commission might be superseded, whereunto we graciously inclining, do, by these presents, will and command you, and every of you, to stay and surcease all further proceedings upon the said commission, and that you supersede the same accordingly, as our special trust is in you reposed. Witness ourself at Westminster, the day of in the year of our reign.

J. Yorke.

When this writ is obtained, the commissioners must be served therewith, by delivering to each of them a copy, and at the same time shewing them respectively, the original writ under seal, and then the proceedings are at an end; but it is usual to give notice thereof in the Gazette.

03/16

In Chemistry.

Petition for the choice of new officials, on the decease of the former ones.

In the matter of *Joseph Massey*, a bankrupt.
To the Right Honourable *Archiebald Lord Dufferin*,
Sir *William Henry Ashurst*, Knight, and Sir *Branson
Hobart*, Knight, Lords Commissioners for the custody
of the Great Seal of Great Britain.

The humble Petition of *Thomas Crandall*, one of the creditors of the said bankrupt, on behalf of himself, and other the creditors of the said bankrupt.

That a commission of bankrupt under the Great Seal of Great Britain, bearing date the 12th day of October, 1764, was awarded and issued forth against the said *Joseph Mansley*, of *Liverpool*, in the county of *Lancaster*, merchant, dealer, and chapman, and under which he was duly found and declared a bankrupt.

That at a meeting regularly appointed under the said commission, *William Fownall, Thomas Bentley, and Thomas Birch*

Birch, all of Liverpool aforesaid, merchants, were duly chosen and appointed assignees of the said bankrupt's estate and effects, and an assignment thereof was in due manner made by the said part of the commissioners in the said commission, and assented to them accordingly. That the said *William Pownall, Thomas Bentley, and Thomas Birch* are all since dead. That it is necessary for the interest of the creditors that new assignees should be chosen of the estate and effects of the said bankrupt.

Your petitioners therefore humbly prays your lordships, that the said commissioners under the said commission, do cause a meeting of the said bankrupt's creditors, to proceed to the choice of one or more assignee or assignees of the estate and effects of the said bankrupt, in the room of those so dead. And that the executors or personal representatives of the said *William Pownall, Thomas Bentley, and Thomas Birch*, may come to an account before the said commissioners, named in the said commission, for the estate and effects of the said bankrupt, come to the hands of, the said *William Pownall, Thomas Bentley, and Thomas Birch*, in their life times, or to the hands of their respective executors or legal representatives, since their decease. And that the executors or personal representatives of the said *William Pownall, Thomas Bentley, and Thomas Birch*, may be directed to deliver over to

Prayer of Petitioner

And

to your petitioner, and such person or persons as shall be chosen assignee or assignees as aforesaid, all such part of the estate and effects of the said bankrupt, as upon the taking of such accounts shall appear to have come to hand or any of their hands, and be remaining in hand and undisposed of, together with all books, papers, and writings in their or any of their custody or power, respectively belonging, or in any wise relating to the said bankrupt, or his estate and effects, and that the executors, or other personal representative of the said *Thomas Birch*, who was the surviving assignee of the said bankrupt, may join in the usual assignment to the assignee or assignees to be chosen; and that the costs of the meeting of the said commissioners for the choice of such new assignee or assignees, as also the taking of such accounts, together with the costs of this application, may be paid out of the estate and effects of the said bankrupt; and that your petitioner may have such other relief as to your lordships shall seem meet.

And your petitioner shall ever pray, &c.

In Chancery, of
 As to the said *Richard Mather* Assignee.

In the matter of *Edward Bate* and
Samuel Sands, bankrupts.

To the Right Honourable *John Lord Loughborough*,
 Sir *William Henry Ashurst*, Knight, and Sir *Beaumont*
Barrow, Knight, Extraordinary Commissioners for the custody
 of the Great Seal of Great Britain.

The humble Petition of *Richard Mather*, of *Liverpool*, in
 the county of *Lancaster*, Merchant, one of the creditors,
 and also one of the assignees of the estate and effects of
 the said bankrupts, on behalf of himself, and other the
 creditors of the said bankrupts.

Sheweth,
 That a commission of bankrupt, under the great seal
 of Great Britain, bearing date the 26th of February, 1777,
 was awarded and issued against the said *Edward Bate* and
Samuel Sands, of *Liverpool* aforesaid, ironmongers, dealers,
 chapmen, and copartners, and under which they were du-
 ly found and declared bankrupts.

That at a meeting regularly appointed under the said
 commission, *John Pofflethwaite* and *Moorcroft Kirkes*, of
Liverpool aforesaid, merchants, together with your peti-
 tioner, were duly chosen and appointed assignees of the said
 bankrupt's estate and effects, and an assignment thereof was
 in due manner made by the major part of the commissioners
 in the said commission named and authorised, to the said
John Pofflethwaite, *Moorcroft Kirkes*, and your petitioner
 accordingly.

That the said *Moorcroft Kirkes* is lately dead; but be-
 fore his death duly made and published his will, and thereof
 appointed *John Sparling*, of *Liverpool* aforesaid, Esquire,
 James

Edward Bate, of the County of Lancaster, in the said county, Gentleman, and Elizabeth Kirke, his widow, executed and executed, quitted his estate in his life time, and also the said John Pashbwaite, received considerable sums of money on account of the said bankrupt's estate, and for which they have not accounted to the commissioners named and authorized under the said commission.

That the said John Pashbwaite lately became a bankrupt, and a commission of bankruptcy was awarded and issued against him, and under which he was duly found and declared a bankrupt, and that at a meeting under such last mentioned commission, William Sberley, of Apsley in the said county, iron dealer, William Ripley, of Liverpool afore-said, merchant, and John Baxter, of the same place, accountants, were duly chosen assignees of the said John Pashbwaite's estate and effects, and an assignment thereof was duly made by the major part of the commissioners in the said last mentioned commission named and authorized, to them accordingly.

That the said Edward Bate and Samuel Sandys, do cause a petition to be presented to your lordship, that the said Edward Bate and Samuel Sandys, be discharged from being one of the assignees of the estate and effects of the said Edward Bate, upon the next day of gauging and Samuel Sandys, and that the petitioners, hereof give and commissioners under the commission aforesaid, a commission against the said Edward Bate and Samuel Sandys, do cause a meeting of their creditors to be had to proceed to the choice of one

W. H. Ashurst
B. Horban

one

...and his assigns or assignees
of the said bank, and effects of the
said bank, in the name of the
said John Posthumus, and also
of the said Moorcroft Kirks, de-
ceased. And that the said John
Posthumus, and his assignee,
may have a release of all his
and their right and title, to the
estate and effects of the said Ed-
ward Bates and Samuel Sandy, re-
specting unreceived and undif-
fered of, and may assign over
the same to your petitioner, and
to such other person or persons as
may be chosen such new assignee
or assignees jointly with your pe-
titioner, and that the said Alex-
ander Sharkey, William Ripley,
and John Morris, as assignees
aforesaid, and the said John
Edward Kirks, James Stockdale, and
Edward Kirks, as executors
of the said Moorcroft Kirks as
aforesaid, may come to an ac-
count before the said commis-
sioners named in the said com-
mission against the said Edward
Bates and Samuel Sandy, for the
estate and effects of the said bank-
rupt, come to the hands of the
said Moorcroft Kirks in his life-
time, and to the said John Post-
humus

as two of the assignees under the commission against the said *Edward Bates* and *Samuel Sandys*, or to the hands of either of them respectively, or to the hands of them the said *John Sparrow*, *James Stockdale* and *Elinabeth*, as executors aforesaid since the death of the said *Abner Kirke*, or to the said *Alexander Shorley*, *William Ripley*, and *John Minnisi*, as assignees of the said *John Poffethwaite*, or any of them. And that they and any of them may be directed to deliver over to your petitioner and such other person or persons as shall be chosen such new assignee or assignees as aforesaid, all such part of the estate and effects of the said *Edward Bates* and *Samuel Sandys*, as upon the taking of such accounts shall appear to have come to their or any of their hands, and to be remaining in specie and undisposed of, together with all books, papers, and writings in their or any of their custody or power respectively belonging, or in any wife relating to the said *Edward Bates* and *Samuel Sandys*, or their estate and effects. And that the costs of

1784

Advertisement of Creditors

...the said meeting of the said com-
missioners for the choice of such
assignees in the
...of the said *Moorecroft Kirkes*,
...and the said *John Pottle*,
...as also the taking of such
...together with the costs
...of this application may be paid
...of the estate and effects of the
...*Edward Burr* and
...and that your peti-
...may have such other relief
...your Lordship shall seem
...And that they
...And your petitioner shall ever
...&c.

Advertisement on the Removal of Assignees.

The commissioners in a commission of bankrupt, awarded
and issued against *John Thomas*, of, &c. intend to meet at
Guildhall, on the _____ day of _____
when and where the creditors of the said bankrupt who have
already proved their debts under the said commission, are to
attend in order to chuse one or more assignee or assignees of
the said bankrupt's estate and effects in the room of *William*
Holland and *John Thompson*, the late assignees who have
been discharged from being assignees by an order of the
right honourable the Lord high Chancellor of Great Bri-

Advertisement

Advertisement on the Choice of new Assignees.

The acting commissioners in a commission of bankrupt awarded and issued against *John Thomas*, of, &c. do hereby give notice, that *William Holland* and *John Thompson*, late assignees of the estate and effects of the said bankrupt have been discharged from being assignees, by an order of the right honourable the Lord high Chancellor of Great Britain, and that *Thomas Hoppins* and *John Simpson*, are appointed assignees in their stead, and that the said bankrupt's debtors are not to pay their debts to the assignees removed.

Petition to be admitted to prove a Debt for the Purpose of assenting or dissenting to the Bankrupt's Certificate.

In Chancery.

*In the matter of Richardson
Bower, and George Lang-
ton, bankrupts.*

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of *Peter Rigby* and *Edmund Rigby*, both of *Liverpool* in the county of *Lancaster*, Esqrs. *William Hope*, *Peter Hope*, *Thomas Cropper*, and *Thomas Carter*, all of the same place, drapers; *Thomas Earl*, *William Earl*, and *Edward Molyneux*, all of the same place, merchants; *Charles Pole* and *Henry Gardner*, both of the same place, merchants; *John Parr* and *Cobham Richardson*, both of the same place, brewers; *William Bramwell* and *Samuel Warren*, both of the same place, brewers; *Thomas Clay*,

of the same place, ironmonger; and *Edward Lowe*, of the same place, cabinet-maker, separate creditors of the above named *George Langton*.

That on or about the 7th day of January last, a commission of bankrupt, under the great seal of Great Britain, was awarded and issued against the said *George Langton*, by the description of *George Langton* of *Liverpool*, in the county of *Lancaster*, merchant, factor, grocer, dealer and chapman, under which he was found and declared a bankrupt.

That the said *George Langton* at the time of his so becoming bankrupt was, and still is, justly and truly indebted unto your petitioners in divers large sums of money amounting in the whole to the sum of three thousand one hundred and sixty one pounds, four shillings and nine-pence half-penny.

That all your petitioners, except the said *William Hope* and *Peter Hope* have proved their respective debts under the said commission.

That soon after the issuing of the said commission a meeting of the creditors of the said *George Langton* was called, in order to consider whether the said commission should be superseded; and at such meeting a considerable number of the creditors attended, when it was unanimously resolved that the said commission should be prosecuted.

That at the same meeting it was proposed, that if the brother of the said *George Langton* who resides in *North America* and has the chief part of the bankrupt's effects in his own hands should make remittances to the assignees and the said *George Langton* the bankrupt should exert himself for the benefit of his creditors, and act to the satisfaction of the assignees under the said commission, that the creditors then present would not only sign the bankrupt's certificate but recommend

mand it to the other creditors also to sign such certificate, and agree that the said bankrupt should be allowed (as an encouragement to do his duty) double the sum that is allowed by act of parliament to bankrupts conforming to the law, or a motion or proposal to that effect was made and agreed to at the said meeting.

That since the said meeting another commission of bankruptcy, bearing date at the 28th day of February last hath been awarded and issued against *Richardson Bower*, and the said *George Langton*, by the description of *Richardson Bower and George Langton*, both of *Liverpool*, in the county of *Lancaster*, grocers and co-partners, and under which they have been declared bankrupts.

That your petitioners have been informed and believe that the debts proved under the said last mentioned commission are of a very inconsiderable amount in comparison to those proved under the first mentioned commission.

That your petitioners find by an advertisement in the *London Gazette*, of the 7th day of May inst. that the certificate of conformity of the said *George Langton and Richardson Bower*, under the commission of bankrupt so issued against them, has been signed by the acting commissioners, and that the same now lays before your Lordship for confirmation and allowance.

That your petitioners are informed that if the said certificate shall be allowed by your Lordship it will discharge the said *George Langton* from the debts he owes to your petitioners, and all other his separate creditors.

That your petitioners (as they believe the generality of the separate creditors of the said *George Langton*) are dissatisfied with his conduct, and your petitioners are apprehensive that if the said *George Langton* shall obtain his certificate, the assignees under the first mentioned commission

will find it very difficult, to recover out of the hands of the brother of the said *George Langton* in North America, the money and effects due from him to the bankrupt's estate.

May 28th 1785.

Let the parties concerned or their agents attend me on the matter of this petition upon the next day of petitions hereof give notice forthwith.

Your petitioners therefore pray that your Lordship will be pleased to grant an order for your petitioners to be, at liberty to call a meeting of the commissioners acting under the said commission, so issued against the said *Richardson Bower* and *George Langton*, in order that your petitioners may prove their respective debts under the same. And that your petitioners may be admitted creditors for what they shall so respectively prove for the purpose of assenting to or dissenting from the allowance of the said *George Langton's* certificate under the said commission. And that the allowances and confirmation of the said certificate, so far as respects the said *George Langton*, may be stayed until your petitioners shall have proved their said respective debts; or that your Lordship will be pleased to make such other order in the premises as to your Lordship shall seem meet.

And your petitioners shall ever pray, &c.

In the matter of *John Thomas*, bankrupt.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of *George Thompson*, Esq.

Sheweth,

That in or about *Hilary* term now last past, your petitioner obtained judgment in his majesty's court of King's Bench, at *Westminster*, against the said *John Thomas* for 200 *l.* debt, besides costs of suit.

That on or about the _____ day of _____ now last past, your petitioner caused the said *John Thomas*, to be taken in execution on the said judgment, who now remains in the custody of the marshal of the Marshalsea of the said court of King's Bench, in execution of the said judgment at your petitioner's suit.

That your petitioner has very great reason to apprehend that the commission of bankrupt awarded and issued, and now in prosecution against the said *John Thomas*, was taken out merely with a design, and on purpose to discharge the said bankrupt from the said execution, and by that means to defraud your petitioner of his said debt and costs.

That under the circumstances of this case, your petitioner is advised that he cannot be admitted to prove his debt under the said commission, without your lordship's order for that purpose, and without your petitioner waiving all benefit of dividends made or to be made under the said commission.

Your petitioner therefore most humbly prays your lordship, that he may be at liberty to prove his said debt under the said commission, and that he may be admitted a creditor for what he shall so prove, in order to enable your petitioner to assent to, or dissent from, the allowance of the commissioners certificate of the said bankrupt's conformity; your petitioner hereby waiving all benefit of any dividend already declared or made, or which shall hereafter be declared or made to the creditors under the said commission.

And your petitioner shall ever pray, &c.

Bankrupt's Petition to have his Certificate allowed.

In Chancery.

In the matter of *Miles Barber*, a bankrupt.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble Petition of the said Bankrupt.

Sheweth,

That *Samuel Warren*, *Joshua Rose*, and *Joshua Leay*, the assignees chosen under the commission of bankrupt awarded against your petitioner as partner with *Samuel Sandys*, *James Kendall* and *Andrew White*, did on the part and behalf of and in

the

the names of and for Sir *Robert Curliſſe*, Baronet, *John Stanton*, and *Charles Crown*, on behalf of themſelves and the reſt of the creditors of the ſaid *Miles Barber*, as partner with *Samuel Sandys*, *James Kendall*, and *Andrew White*, as aforeſaid, on or about the twelfth day of *January* laſt, preſent a petition to the then Lord Chancellor of *Great Britain*, thereby praying that they the ſaid petitioners and the reſt of the creditors of the ſaid bankrupt (as partners with *Samuel Sandys*, *James Kendall*, and *Andrew White*) might be at liberty to prove their debts under the ſaid commiſſion awarded againſt the ſaid *Miles Barber*, in his ſeparate capacity; and that they might be admitted creditors for what they ſhould ſo prove, for the purpoſe of aſſenting to or diſſenting from the allowance of the ſaid bankrupt's certificate. And that they the ſaid petitioners and the reſt of the creditors of the ſaid *Miles Barber* (as partner with *Samuel Sandys*, *James Kendall* and *Andrew White*) might be at liberty to aſſent to or diſſent from the allowance of the ſaid commiſſioners ſaid certificate of the ſaid *Miles Barber's* conformity. And that his Lordſhip's allowance and confirmation of ſuch certificate muſt be ſtaid.

That by an order made upon the ſaid petition bearing date the 20th day of *February* laſt. It was ordered that the petitioners and the reſt of the creditors of the ſaid *Miles Barber*, as partner with *Samuel Sandys*, *James Kendall* and *Andrew White*, ſhould be at liberty to go before the major part of the commiſſioners named in the commiſſion of bankrupt, iſſued againſt the ſaid *Miles Barber*, to prove the debts due to them reſpectively from the ſaid *Miles Barber*, as partner with the ſaid *Samuel Sandys*, *James Kendall*, and *Andrew White*; and that they ſhould be admitted creditors under the ſaid commiſſion, for what they ſhould ſo prove reſpectively for the purpoſe only of their being at liberty to

assent to or dissent from the allowance of the certificate of the said *Miles Barber*. And the said certificate was thereby referred back to the commissioners, in order to their reconsidering the same.

That no proceedings have since been had under the said order. And the said *Samuel Warren*, *Joshua Rose*, and *Joseph Eay*, on the part and behalf of the said *Sir Robert Cunliffe*, *John Stanton*, and *Charles Crown*, do not intend to prosecute the said order, or to give any further opposition to the allowance of your petitioner's certificate, as appears by their consent signified to your lordship.

Your petitioner therefore humbly prays your lordship, that his said certificate may be granted and allowed.

And your petitioner shall ever pray, &c.

In Chancery.

Petition on the behalf of the Bankrupt, that a Creditor may elect to proceed at Law, or abide by the Commission.

In the matter of *Miles Barber*, a bankrupt, as partner with *James Kendall* and *Andrew White*.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble petition of the bankrupt,

Sheweth,

That a commission of bankrupt was awarded and issued against your petitioner, by the name and description of

Miles

Miles Barber, late of *Liverpool*, in the county of *Lancaster*, merchant, dealer and chapman, partner with *James Kendall* and *Andrew White*, of *Liverpool*, in the said county of *Lancaster*, merchants, dealers and chapmen, bearing date at *Westminster* the first day of *October*, one thousand seven hundred and seventy seven, directed to *Thomas Hotchkin*, *Edward Whitby*, and *Michael Dodson*, Esquires, and *John Elderton* and *Robert Fry*, Gentlemen. And your petitioner was duly found and declared a bankrupt,

That *Samuel Hartley*, *James Simpson*, *Thomas Greg*, and *Thomas Bell*, were duly chosen assignees of the estate and effects of your petitioner, as partners as aforesaid, at a meeting of the creditors, held in pursuance of an advertisement in the *London Gazette* for that purpose; and that an assignment of the estate and effects of your petitioner, and the said *James Kendall* and *Andrew White*, hath been duly made and executed unto the said *Samuel Hartley*, *James Simpson*, *Thomas Greg*, and *Thomas Bell*, by the major part of the commissioners in the said commission named and authorised.

That *James Hargrave*, a creditor of your petitioner, and his said partners *James Kendall* and *Andrew White*, proved under the said commission a debt of three hundred and thirty-nine pounds seven shillings and five-pence, as due from your petitioner, and his said partners, unto him the said *James Hargrave*, and hath been accordingly admitted a creditor under the said commission for that sum.

That the said *James Hargrave* commenced an action in the court of *King's Bench* against your petitioner and his said partners, and hath held your petitioner to bail for the sum of three hundred and thirty-nine pounds seven shillings and five-pence, proceeding to judgment and execution in such action,

Your

Your petitioner therefore humbly prays
 your lordship, that the said *James Har-*
grove may be directed to make his elec-
 tion within a time to be limited by your
 lordship, whether he will receive a divi-
 dend under the said commission, ratably
 and in proportion with the other credi-
 tors seeking relief under the same, or
 proceed at law against your petitioner,
 and his said partners. And in case the
 said *James Hargrove* shall elect to pro-
 ceed at law against your petitioner and
 his said partners, then that he may by
 your lordship's order be precluded and
 debarred receiving a dividend or divi-
 dends out of the estate and effects of
 your petitioner and his said partners, in
 respect of such debt. And that your
 petitioner may have such further and
 other relief in the premises, as to your
 lordship shall seem expedient.
 And your petitioner shall ever pray, &c.

Teste
 Your

Petition

Petition for an Order upon a former Clerk to a Commission, to deliver up the Proceedings under it.

In the matter of *Edward Leatherbarrow*, a bankrupt.

To the Right Honourable *Edward Lord Thurlow*, Baron *Thurlow*, of *Abfield*, in the county of *Suffolk*, Lord High Chancellor of *Great Britain*.

The humble Petition of *Thomas Stainforth*, of *Liverpool*, in the county of *Lancaster*, merchant, on the behalf of himself, and *Elizabeth* his wife, a daughter of *Charles Geore*, deceased,

Sheweth,

That on or about the 12th day of *October*, in the year of our Lord 1752, a commission of bankrupt under the great seal of *Great Britain*, was awarded and issued against *Edward Leatherbarrow*, of *Wigan*, in the county of *Lancaster*, grocer, directed to *George Kenyon* and *Thomas Piggott*, Esquires, *Richard Broom*, *Robert Bromley*, and *Richard Eccleston*, Gentlemen, under which he was found and declared a bankrupt; and *Charles Geore* and *Richard Cribb*, both of *Liverpool*, in the county of *Lancaster*, merchants, were duly chosen assignees, to whom the estate and effects of the said *Edward Leatherbarrow* were assigned by the major part of the commissioners acting under the said commission.

That the commissioners named in the said commission are all of them dead, and the said *Richard Cribb*, the assignee, died several years ago.

That

That the said *Charles Goore* survived the said *Richard Cribb*, but is lately dead intestate, leaving *Elizabeth* his daughter, your petitioner's wife, his personal representative.

That your petitioner and his said wife have taken out letters of administration to the effects of the said *Charles Goore*.

That your petitioner upon inspecting the books and accounts of the said *Charles Goore*, found that there remained in his hands at the time of his death, a sum of money arising from the estate of the said *Edward Leatherbarrow*; and your petitioner being desirous that the same should be divided amongst the said *Edward Leatherbarrow's* creditors, applied for and obtained a renewed commission of bankrupt under the great seal of *Great Britain*, against the said *Edward Leatherbarrow*, bearing date the 8th day of *October* last, directed to *Robert Moss* and *Robert Richmond*, Esquires, *Thomas Wyatt*, *Edward Blackstock*, and *Joshua Lacy*, Gentlemen.

That *John Bromley*, late of _____, as aforesaid, but now of _____, being the solicitor to the first mentioned commission, and having all the proceedings under the same in his custody, your petitioner caused several applications to be made to him to deliver such proceedings to your petitioner, and at length obtained from him the said first mentioned commission, and the counter parts of the bargain and sale, and assignment of the estate and effects of the said bankrupt; but the commissioners named in the said renewed commission, finding that they could not with propriety act under the same, without having all the other proceedings under the said first mentioned commission before them, your petitioner applied again to the said *John Bromley* to deliver the same to your petitioner; but he refused so to do, pretending that his
bill

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bill, on the assignees for soliciting the said first mentioned commission had not been paid.

That your petitioner found amongst the papers of the said *Charles Goore*, deceased, the said *John Bromley's* bill of fees for soliciting the said first mentioned commission, with the said *John Bromley's* receipt for the amount, which is now in the possession of your petitioner; and also the said *John Bromley's* promissory note to the said *Charles Goore* and *Richard Cribb*, for the sum of 27 l. 8 s.; and it appears by the accounts of the said *Charles Goore*, that the said *John Bromley* is now considerably indebted to the estate of the said bankrupt.

That your petitioner, on or about the 13th day of December, 1784, caused a notice in writing to be served on the said *John Bromley*, purporting that if he did not deliver the proceedings under the said first mentioned commission to your petitioner, an application would be made to your lordship for an order upon him to deliver the same; and that he might pay the costs of such application. And your petitioner in such notice informed the said *John Bromley*, that your petitioner was willing to pay any just demand he had upon the said late assignees, after giving credit for what the said *John Bromley* should be found indebted to the said bankrupt's estate.

That your petitioner hath since last, caused repeated applications to be made to the said *John Bromley* for the said proceedings, and the said *John Bromley* hath promised to deliver the same, but hath hitherto neglected so to do; and he now alleges that such proceedings are mislaid.

That the commissioners named in the said renewed commission cannot act under the same, not having the proceed-

ings

ings under the said former commission, and having no account of the debts proved under such former commission. That your petitioner is desirous that the said renewed commission should be proceeded in, and the money so appearing to be in the hands of the said *Charles Court*, as also signs under the said first mentioned commission, be divided amongst the creditors of the said *Edward Leatherbarrow*; but inasmuch as the commissioners named in the said renewed commission cannot act under the same, without having the proceedings taken under the former commission.

Your petitioner therefore most humbly prays, that your lordship will be pleased to order that the said *John Bramley* do deliver to your petitioner, upon oath, all the proceedings under the said first mentioned commission now in his custody, possession, or power, your petitioner hereby offering to pay what, if any thing shall appear to be due to the said *John Bramley*, for his fees and disbursements on account of the said commission. And that the said *John Bramley* may be ordered to pay your petitioner's costs of this application, or that your lordship will be pleased to make such other order for the direction of the commissioners named in the said renewed commission and your petitioner, as to your lordship shall seem meet.

And your petitioner shall ever pray, &c.

Petition

Appendix of Petitions

1801

**Petition for discharging Bankrupt out of custody,
Plaintiff at Law becoming petitioning Creditor.**

**In the matter of John
Thomas, bankrupt.**
**To the Right Honourable the Lord High Chancellor of
Great Britain.**

The humble petition of the said bankrupt.

Sheweth,

That on or about the _____ day of
now last past, your petitioner was taken into custody at the
suit of *George Thompson, of, &c.* for the sum of
by virtue of _____ re-
turnable _____

That before the return of the said writ, a commission of
bankrupt was awarded and issued under the great seal against
your petitioner, on the sole petition of the said *George
Thompson.*

That it appears to your petitioner, by a summons under
the respective hands-writing of the major part of the com-
missioners, in and by the said commission named and au-
thorised, with a copy whereof your petitioner hath been per-
sonally served, that he was found and declared bankrupt.

Your petitioner, therefore, most humbly
prays your Lordship will be pleased to
order him to be discharged out of cus-
tody, at the suit of the said *George Thomp-
son*, and at his expence, and that Mr.
John Knight, clerk to the said commis-

sion,

tion, be ordered to attend your lordship with said commission, on the hearing of this petition.

And your petitioner shall ever pray, &c.

A copy of the causes of the bankrupt's commitment, and also an affidavit of their being signed by the proper officer, must be produced and read in court.

Petition by separate Creditors to prove under a joint Commission.

To, &c.

In the matter of *Francis Gibbons* and *Adam Pierce*, bankrupts.

The humble petition of *Humphry Parslow*, of, &c. on behalf of himself and the rest of the separate creditors of the said *Adam Pierce*.

Sheweth

- That on or about the day of last, a joint commission of bankrupt under the great seal of Great Britain, was awarded and issued against the said *Francis Gibbons*, and *Adam Pierce* of London, merchants and co-partners, and they were thereupon declared bankrupts accordingly, and their estate and effects as well joint as separate have been assigned to an assignee or assignees duly chosen under the said commission without distinguish-

ing or dividing the joint effects from the respective separate estates of the said bankrupts.

That the said *Francis Gibbons* and *Adam Pierce*, against whom the said joint commission was awarded and issued, were, before the date and suing forth of the said commission, and still are justly indebted to your petitioner and others on the said bankrupt's respective separate accounts in very large sums of money, as well for monies lent and advanced to the said *Francis Gibbons* and *Adam Pierce* respectively, by your petitioner, as on other accounts.

That the said bankrupts at the time of issuing the said commission were respectively possessed of, or otherwise entitled unto, a very considerable personal estate in their own right, and your petitioner is advised that such separate estates are first liable to payment of the several and respective separate debts of the said bankrupts.

That under the circumstances of this case, your petitioner, and other separate creditors of the said bankrupts cannot be admitted to prove their several and respective separate debts under the said joint commission, so as to bind the respective separate estates of the said bankrupts, for the benefit of your petitioner, and the rest of the separate creditors of the said bankrupts, without your Lordship's order for that purpose.

Your petitioner therefore most humbly prays, that your Lordship would be pleased to order that your petitioner and the rest of the separate creditors of the said bankrupts may be at liberty to prove their several and respective separate debts under the said joint commission, and that it may be referred to the major part of

the commissioners, named and authorized in and by the said commission, to take distinct accounts of the separate estates of the said bankrupts respectively for the benefit of their said several and respective separate creditors, and that the costs of this application and taking such accounts be paid and born out of the respective separate estates of the said bankrupts, or that your Lordship would make such other order in the premises, for the relief of your petitioner and the rest of the separate creditors of the said bankrupts as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

In Chancery.

Petition by a Bankrupt to have his Certificate under an Insolvent Act.

In the matter of John Read a bankrupt.

To the Right Honourable the Lord High Chancellor of Great Britain.

The humble Petition of the said John Read.

Sheweth,

That a commission of bankrupt under the great seal of Great Britain bearing date the day of in the year of his present majesty's reign,

was

was awarded and issued against your petitioner, directed to certain commissioners therein named, and your petitioner hath thereupon been duly found and declared a bankrupt.

That your petitioner surrendered himself under the said commission, and duly passed his examination before the acting commissioners in the said commission named, and hath in all things duly conformed himself to the several statutes now in force concerning bankrupts.

That notwithstanding your petitioner hath in all things conformed and submitted to the said commission, your petitioner hath not yet been able to obtain his certificate for want of sufficient number of his creditors signing the same.

Your petitioner therefore humbly prays your Lordship to direct the acting commissioners named in and authorized under the said commission to certify to your Lordship the conformity or nonconformity of your petitioner under the said commission, and such other matters as to them shall seem necessary concerning the same, in order that such certificate may be allowed by your Lordship, if your Lordship shall so think fit, in pursuance of an act of parliament made in the eighteenth year of the reign of his present majesty, intituled an Act for the Relief of Insolvent Debtors, and for the Relief of Bankrupts in certain cases; or that your Lordship will be pleased to make such other order in the premises for the relief of your petitioner as to your Lordship shall seem meet.

And your petitioner shall ever pray, &c.

The Lord Chancellor's Order thereupon.

Tuesday, the 8th Day of December, 1778.

Lord Chancellor.

*In the matter of John Read,
a bankrupt.*

Whereas the said *John Read*, did on this eighth day of *December* instant, prefer his petition to me, shewing that a commission of bankrupt under the great seal of *Great-Britain*, bearing date the twenty-eighth of *December*, in the sixteenth year of his present Majesty's reign, was awarded and issued against the petitioner directed to certain commissioners therein named, and the petitioner had thereupon been duly found and declared a bankrupt. That the petitioner surrendered himself under the said commission, and duly passed his examination before the acting commissioners in the said commission named, and had in all things duly conformed himself to the several statutes then in force concerning bankrupts. That notwithstanding the petitioner had in all things conformed and submitted to the said commission, the petitioner had not yet been able to obtain his certificate, for want of sufficient number of his creditors signing the same: And therefore praying, that I would direct the acting commissioners named in and authorized under the said commission, to certify to me the conformity or non-conformity of the petitioner under the said commission, and such other matter as to them should seem necessary concerning the same, in order that
such

such certificate might be allowed by me, in pursuance of an act of parliament, made in the eighteenth year of his present Majesty's reign, intituled an Act for the relief of Insolvent Debtors, and for the relief of Bankrupts in certain cases. Now upon reading the said petition and an affidavit of *John Read* the petitioner, I do order that the major part of the commissioners named in the commission of bankrupt issued against the petitioner, do certify to me the conformity or non-conformity of the petitioner under the said commission, and such other matter as to the said commissioners shall seem necessary concerning the same.

Thurlow, C.

December 15, 1778.

Exhibited to us this under the commission against *John Read*.

John Crofts.

A. Baillie.

E. Barnard.

The Commissioner's Certificate.

To the Right Honourable the Lord High Chancellor of Great Britain.

In obedience to your lordship's order bearing date the 8th day of *December*, 1778, we whose hands and seals are hereunto subscribed and set, being the major part of the commissioners, named and authorised in and by a commission of bankrupt, awarded and issued against *John Read*, at that time of *South Mims*, in the county of *Middlesex*, dealer and chapman, but now of *Barking*, in the county of *Essex*, baker, bearing date at *Westminster*, the 28th day of

Declarer, in the 16th year of his present Majesty's reign, directed to *John Cook*, senior, *John Crofts*, and *Lawrence Brown*, Esqrs. together with *Alexander Baillie*, and *Edward Barnard*, Gentlemen, do humbly certify to your lordship, that the major part of the commissioners by the said commission authorized, having begun to put the said commission into execution, did find that the said *John Read* became bankrupt since the 14th day of *May*, 1729, and before the date and suing forth of the said commission within the true intent and meaning of the statutes made and now in force concerning bankrupts, or some or one of them, and did thereupon declare and adjudge him a bankrupt accordingly. And we further humbly certify to your lordship, that the said *John Read*, being so declared a bankrupt, the major part of the said commissioners by the said commission, authorized pursuant to the direction of the act of parliament, made in the fifth year of the reign of his late Majesty King *George* the Second, intituled an act to prevent the committing of frauds by bankrupts, did cause due notice to be given and published in the *London Gazette*, of such commission being issued, and of the times and places of three several meetings, the said *John Read* was required to surrender himself to the said commissioners named in the said commission, or the major part of them, and to make a full disclosure and discovery of his estate and effects, and the creditors of the said *John Read* were desired to come prepared to prove their debts, and to assent to or to dissent from the making this certificate. And we further humbly certify to your lordship, that such three several meetings of the major part of the commissioners, by the said commission authorized, were held pursuant to such notice so given and published as aforesaid: And that at one of those meetings, the said *John Read*

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Read did surrender himself to the major part of the said commissioners, by the said commission authorized, and did sign and subscribe such surrender, and did submit himself to be examined from time to time upon oath, by and before the major part of the said commissioners, by the said commission authorized, and in all things to conform to the said several statutes made, and now in force concerning bankrupts, and particularly to the said act made, in the fifth year of the reign of his said late Majesty. And we further humbly certify to your lordship, that at the last of the said three meetings, the said *John Read*, did attend and finish his examination before the major part of the said commissioners by the said commission authorized according to the directions of the said last mentioned act. And upon such his examination made a full discovery and disclosure of his estate and effects, and in all things conformed himself to the several statutes made and now in force concerning bankrupts, and particularly according to the directions of the said act made in the fifth year of his said late Majesty's reign, and there doth not appear to us any reason to doubt of the truth of such discovery, or that the same is not a full discovery of all the estate and effects of the said *John Read*.

The Lord Chancellor's Order upon the Certificate.

Wednesday, the 16th Day of December, 1778.

Lord Chancellor.

In the matter of *John Read*,
a bankrupt.

Whereas the said bankrupt, did on this sixteenth day of ~~December~~ instant, prefer his petition to me shewing, that

in obedience to my order, bearing date the eighth day of *December* instant, made upon the petition of the petitioner, the major part of the commissioners named in and acting under a commission of bankrupt, awarded and issued against the petitioner, met and examined the proceedings taken under the same, and had by certificate under their hands and seals, bearing date the fifteenth day of *December* instant, certified to me that the petitioner had in all things conformed to the several statutes made, and then in force concerning bankrupts: And therefore praying that I would order an advertisement to be inserted in the *London Gazette*, setting forth that the petitioner's certificate would be allowed by me, pursuant to an act of parliament made in the eighteenth year of his present Majesty's reign, intituled an Act for the relief of Insolvent Debtors, and for the relief of Bankrupts in certain cases unless cause be shewn to the contrary. Now upon reading the said petition, I do order that an advertisement be inserted in the *London Gazette*, for the allowance of the petitioner's certificate pursuant to an act of parliament, made and passed in the eighteenth year of the reign of his present Majesty, intituled an Act for the relief of Insolvent Debtors, and for the relief of Bankrupts in certain cases.

Thurlow, C.

Affidavit

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ect

*Affidavit of Bankrupt's Conformity to support his
Petition.*

In Chancery.

In the matter of *John Read*,
a bankrupt.

John Read, formerly of *South Mims*, in the county of
Middlesex, dealer and chapman, but now of *Barking*, in
the county of *Essex*, baker, maketh oath that on the
day of *August* in the year of our Lord 177 *7*, a com-
mission of bankrupt was awarded and issued against this
deponent, directed to certain commissioners therein named,
to which commission this deponent duly appeared and
finished his examination, and hath in all things conformed
to the several acts now in force concerning bankrupts by
his this deponent's surrender and submission to such com-
mission, and hath not been committed for any act of con-
tumacy or non-conformity.

Sworn, &c,

Petition for the removal of Assignees for Malconduct.

In the matter of *Francis Gibben*,
bankrupt.

To, &c.

The humble Petition of *Charles Dennis*, one of the assignees
of the estate and effects of the said bankrupt.

Sheweth,

That a commission of bankrupt bearing date at *West-
minster*, the seventh day of *July* now last past, was awarded

and issued against the said *Francis Gibbons*, then of, &c. on the petition of *Charles Jones*, of, &c. one of the creditors of the said *Francis Gibbons*, which commission was directed to certain commissioners therein named, the major part of whom found and declared the said *Francis Gibbons*, bankrupt.

That your petitioner, and *John Partridge*, of, &c. were duly chosen joint assignees of the estate and effects of the said bankrupt. That the said *John Partridge* at the time of issuing the said commission, and also at the time of his being chosen assignee as aforesaid, was in possession of the estate and effects of the said bankrupt by virtue of a judgment and execution thereon.

That *J. R.* of *Gray's Inn*, in the county of *Middlesex*, Gent. is the attorney who prosecuted the said judgment to execution, and is also clerk or solicitor to the said commission, which was taken out on a concerted act of bankruptcy, committed by the said bankrupt, by the advice and direction of the said *John Partridge* and *J. R.* subsequent to possession had under the said execution by the said *John Partridge*.

That the said *John Partridge* and *J. R.* in order to defeat your petitioner in his endeavours to dispose of the estate and effects of the said *Francis Gibbons* the bankrupt, refused your petitioner the inventory taken under the said commission, as also the lease of the said bankrupt's dwelling-house, and likewise the books containing an account of the debts due to the said bankrupt.

That the said *John Partridge* and *J. R.* both attended when the effects of the said *Francis Gibbons*, the bankrupt, were to be sold by public auction, and because your petitioner refused to consent that the monies arising from the said sale should be subject to the judgment and execution

of the said *John Partridge*, and to the sole payment of his debt, in exclusion of all the other creditors of the said bankrupt; the said *John Partridge* declared, in the presence of several persons then and there assembled for the purpose of bidding for and buying the said effects of the said *Francis Gibbons*, the bankrupt, that the said auction was without his consent; and the said *J. R.* declared, that every person who became purchasers of any part of the said bankrupt estate and effects should have actions of *trover* brought against them for the same.

Your petitioner therefore most humbly prays, your Lordship will be pleased to order, that the said *John Partridge* be removed from being one of the assignees of the estate and effects of the said *Francis Gibbons*, the bankrupt; and that the said *John Partridge* and *J. R.* do deliver to your petitioner upon oath, all the proceedings under the said commission; and also all books, papers, writings, and accounts, touching or in any way concerning the said commission. And that the said *John Partridge* and *J. R.* reimburse your petitioner all expences incurred by him on this application.

And your petitioner shall ever pray, &c.

Petition

Petition to prove a Debt after a Dividend.

In the matter of *Francis Gibbons*, bankrupt.

To, &c.

The humble Petition of *Robert Martin*, of, &c.

Sheweth,

That the said *Francis Gibbons* on or about the day of *Nov. 1780*, became bankrupt, and a commission of bankrupt dated the said day of *Nov. 1780* was awarded against him, and he was declared bankrupt accordingly; and *John Partridge*, of, &c. and *Charles Dennis*, of, &c. were duly chosen assignees of his estate and effects.

That there was at the time of the date and suing forth of the said commission, due to your petitioner from the said bankrupt the full and just sum of 200 £ of lawful money of *Great Britain*, for principal and interest by virtue of a bond or obligation, bearing date the day of *Nov. 1777*, under the hand and seal of the said bankrupt, for which said sum of 200 £ your petitioner hath not, nor hath any other person or persons for his use, or for the use of any other person or persons, to the knowledge or belief of your petitioner, had or received any security or satisfaction whatsoever, save and except the said bond.

That your petitioner having been of late very much abroad, hath had no opportunity of reading the *Gazette*, as by affidavit * annexed appears; whereby your petitioner hath

* The affidavit must be in the common form, and the creditor must swear that, ' he hath not read the *Gazette*, in which any advertisement

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hath neglected to prove his said debt under the said commission.

That a dividend hath been made of the said bankrupt's estate and effects, of fourteen shillings in the pound.

That on the day of last, there was a meeting of the commissioners, in order to make a second dividend of the said bankrupt's estate, at which meeting your petitioner was admitted to prove his said debt of 200 £. but there being several claims undetermined, and the assignees not being prepared to pass their accounts, the making a second dividend of the said bankrupt's estate and effects was adjourned to the day of next.

That your petitioner hath, by his solicitor, applied to the assignees to be paid the dividend of his said debt equal with the other creditors (who have received their dividend of fourteen shillings in the pound) out of the money that shall appear to be remaining in their hands; but they insist, that they cannot pay your petitioner after that rate in the pound, on your petitioner's debt.

Your petitioner therefore most humbly prays your Lordship, that the assignees of the said bankrupt's estate and effects, may pay your petitioner his proportionable dividend of the said estate and effects, in respect of his debt so proved as aforesaid, equal with the creditors already paid.

And your petitioner shall ever pray, &c.
 And your petitioner sheweth, that the said advertisement was inserted, to the creditor's belief, relative to the commission of bankrupt awarded against the said *Francis Gibbons*, or to the like effect.

Covenant

Covenant on the part of the Assignees (to place out the Money arising from the Bankrupt's Estate in the hands of a Banker appointed by the Creditors) to be inserted in the Commissioner's Assignment.

*Immediately before the words "Now this indenture witnesseth," insert the following recital—And the said creditors did also direct, that the monies arising by and to be received, from time to time, out of the estate of the said John Thomas, should amount to the sum of 100*l*. the same should be paid into the hands of*

banker in

until the same should be divided amongst all the creditors of the said John Thomas, in such manner as is directed by an act of parliament, made and passed in the fifth year of the reign of his late Majesty king George the Second, intituled, "An act to prevent the committing of frauds by bankrupts."

*Then among the covenants of the deed insert the following : And also that they the said A. B. and C. D. their executors, administrators, and assigns, shall and will pay all monies which they shall receive by or from the debts of the said John Thomas, and by and from the sale of all or any part of the said goods, wares and chattels, estates and effects of the said John Thomas, when and so often as the same shall amount to the sum of 20*l*. immediately into the hands of the said _____ to be there deposited for safe custody, until the same shall be divided amongst all the creditors of the said John Thomas, who have already, or shall hereafter in due time come in and seek relief by virtue of the said commission, in such manner as is directed*

Enacted by the said act of parliament of the fifth year of the reign of his said late Majesty king George the Second:

Conveyance by Lease and Release by old Assignee, where one Assignee only is removed by Order of the Lord Chancellor.

This indenture made the day of 26th George Third, and in the year of our Lord, 1785, between of and of of the one part, and of the other part, witnesseth, that for and in consideration of the sum of $\text{£}5$ s. of lawful money of Great Britain, by the said in hand well and duly paid to the said and at or before the sealing and delivering of these presents, the receipt whereof is hereby acknowledged, they the said and

have, and each of them hath bargained and sold, and by these presents do, and each of them doth, bargain and sell all the messuages, lands, tenements, and hereditaments of John Thomas, late of merchant, against whom a commission of bankrupt hath been awarded and issued; and also all the estate, right, title, interest and trust, property, possession, benefit, equity of redemption, claim, and demand whatsoever, which he the said John Thomas, at the time of his becoming a bankrupt as aforesaid, had of, in or to all and singular the said messuages, lands, tenements, hereditaments, and all and singular other the premises herein before mentioned, and hereby bargained and sold, or mentioned or intended so to be, with their and every of their appurtenances; and also all other messuages, lands,

lands, tenements, and hereditaments whatsoever and where-
 soever, which he the said *John Thomas* hath purchased or
 obtained for money or other recompence, jointly with his
 wife, children, or child, to the only use of him the said
John Thomas; and also all such his estate, interest, right,
 and title whatsoever, which he the said *John Thomas* had of,
 in or to any messuages, lands, tenements, or heredita-
 ments whatsoever, at the time he became bankrupt as
 aforesaid, which he could depart withal, To have and to
 hold all and singular the said messuages, lands, tenements, and
 hereditaments, herein before mentioned to be hereby bar-
 gained and sold, with their and every of their appurte-
 nances, unto the said

his
 executors, administrators and assigns, from the day next be-
 fore the day of the date of these presents, for and during,
 and unto the full end and term of one whole year from
 thence next ensuing, and fully to be compleat and ended,
 yielding and paying therefore, on the last day of the said
 term, unto the said

and their heirs or assigns,
 at the yearly rent of a pepper corn, (if the same shall be
 lawfully demanded) to the intent and purpose that by vir-
 tue of these presents, and of the statute for transferring uses
 into possession, he the said

may be in the actual possession of all and singular the said
 premises above mentioned, to be bargained and sold, or in-
 tended so to be, with the appurtenances, and thereby be
 enabled to accept of a grant and release of the freehold and
 inheritance thereof, to him and his heirs.

In witness, &c.

This

This indenture tripartite, made the day
 of 25th *George Third*, and in the year
 of our Lord 1785, between *Thomas Hopkins* of
 and *John Simpson* of of the first
 part, *I. K. L. M.* and *N. O.* Esquires, being the major
 part of the commissioners named and authorised in and by a
 commission of bankrupt awarded and issued forth against
John Thomas, of the second part, and *C. D.* of

 of the third part. Whereas a
 commission of bankrupt, under the Great Seal of *Great Bri-*
tain, bearing date at *Westminster* the day of

1785, grounded upon the several sta-
 tutes made, and now in force concerning bankrupts, or some
 or one of them, hath been awarded and issued forth against
 the said *John Thomas*, directed to the said *I. K. L. M.*
 and *N. O.* together with *R. S.* and *T. U.* Gentlemen,
 thereby giving full power and authority to the said commis-
 sioners, four or three of them, to execute the same, as in
 and by the said commission, relation being thereunto had,
 doth more fully and at large appear. And whereas the said
I. K. L. M. and *N. O.* being the major part of the said
 commissioners in the said commission named and autho-
 rised, having begun to put the said commission into execu-
 tion, upon due examination of witnesses, and other good
 proof upon oath before them had and taken, found, or it
 otherwise appeared to them, that the said *John Thomas* for
 several years before the date and suing forth of the said
 commission, exercised and followed the trade or business of
 a merchant, and sought and endeavoured to get his living
 thereby, as others of the same trade or business usually do;
 and that he the said *John Thomas*, before the date and suing

forth of the said commission, became indebted to *V. W.* of in the sum of 100*L.* and upwards, and being so indebted, he the said *John Thomas* did, in the judgment of the major part of the commissioners in the said commission named, become bankrupt to all intents and purposes, within the true intent and meaning of the several statutes in the said commission mentioned, some or one of them, and they declared him bankrupt accordingly. And whereas at a meeting of the major part of the commissioners in and by the said commission named and authorised, at the *Guildhall* of the city of *London*, the day of pursuant to notice in the *London Gazette* for that purpose given, the major part in value of the creditors of the said *John Thomas* then present, and who had proved their debts under the said commission, and whose debts respectively amounted to 10*L.* or upwards, did nominate, elect, and chuse the said *Thomas Hopkins* and *John Simpson*, to be the assignees of the estate and effects of the said

And whereas the major part of the said commissioners, by due examination of witnesses upon oath, found, or it otherwise appeared unto them, that the said *John Thomas*, at the time or times he became bankrupt as aforesaid, was seised of, interested in, or intitled unto divers messuages, lands, tenements, and hereditaments, situate, lying, and being at in the county of and elsewhere, in the kingdom of *Great Britain*. And whereas the said commissioners, parties to these presents, in further execution of the said commission, and of the statutes therein mentioned, and by virtue of the same, by indenture bearing date the day of made between the said of the

the one part, and the said
of the other part, and duly enrolled in the High Court of
Chancery, did as much as in them lay, and they lawfully
might, order, grant, bargain, and sell unto the said *Thomas
Hopkins* and *John Simpson*, their heirs and assigns, all the
said bankrupt's messuages, lands, tenements, and heredi-
taments, and also all the estate, right, title, use, trust, pro-
perty, possession, benefit, equity of redemption, claim, and
demand whatsoever, which he the said *John Thomas*, at the
time of his becoming a bankrupt as aforesaid, had of, in
or to all and singular the said messuages, lands, tenements,
hereditaments, and all and singular other the premises
therein and herein before mentioned, and thereby ordered,
granted, bargained, sold, or mentioned or intended so to
be, with their and every of their appurtenances; and also
all other messuages, lands, tenements, and hereditaments
whatsoever and wheresoever, which he the said *John Tho-
mas* had purchased or obtained for money or other recom-
pence, jointly with his wife, children, or child, to the only
use of him the said *John Thomas*; and also all such use,
estate, interest, right, and title whatsoever, which he the
said *John Thomas* had of, in or to, any messuages, lands,
tenements, or hereditaments whatsoever, at the time he
became bankrupt as aforesaid, which he could depart withal,
to hold the same unto the said *Thomas Hopkins* and *John
Simpson*, their heirs and assigns, for ever, or according to
the said *John Thomas* his right and interest therein, subject
to such mortgage or mortgages, or other charges and in-
cumbrances, (if any such there were) as the same were le-
gally charged with, or liable to, in trust nevertheless, for
the benefit and advantage of them the said *Thomas Hopkins*
and *John Simpson*, and all and every other the creditors of
the said *John Thomas*, who then had come in and sought
relief,

• O 2

relief, or should thereafter in due time come in and seek relief by virtue of the said commission, or any renewed commission against the said *John Thomas*, and duly prove and ascertain their several and respective debts under the same, according to the directions and limitations of the said statutes; and as to the overplus, if any should be, after payment and satisfaction of all such debt or debts as should or might be proved under the said commission, or any renewed commission against the said *John Thomas*, and the charges of suing forth and prosecuting the same, In trust for the said *Thomas Hopkins* and *John Simpson*, their heirs or assigns, according to the said statutes, and the true intent and meaning thereof. And whereas by an order of the present Lord High Chancellor of *Great Britain*, made on the day of instant, founded upon the petition of and creditors of the said *John Thomas*, preferred to the said Lord Chancellor, his lordship upon hearing the said petition read, and what was alledged by the counsel for the said petitioners, and by consent of the counsel for the assignees, the said *Thomas Hopkins* and *John Simpson* did (amongst other things) order that the said *Thomas Hopkins*, at his own desire, should be discharged from being an assignee of the said bankrupt's estate and effects; and that the major part of the said commissioners named in the said commission, should cause due notice forthwith to be given and published in the *London Gazette*, appointing a time and place for the creditors of the said *John Thomas* to meet, in order to proceed to the choice of a new assignee, in the room of the said *Thomas Hopkins*; and that the creditors of the said bankrupt, who should be present at such meeting, should proceed to such new choice accordingly; and that after such choice, the
major

major part of the said commissioners should make and execute a new assignment of the estate and effects of the said bankrupt, remaining unreceived and not disposed of, to such person who at such meeting should be chosen such new assignee, and that the said *Thomas Hopkins* and *John Simpson* should join in the said assignment to the said new assignee, and *John Simpson*, as by the said in part recited order, relation being thereunto also had, may more fully and at large appear. And whereas in pursuance of the said in part recited order, notice of the day of this instant was duly given, purporting that the commissioners intended to meet on the day of this instant at four of the clock in the afternoon at *Guildhall, London*, in order to proceed to the choice of a new assignee in the room of the said *Thomas Hopkins*. And whereas the commissioners, parties to these presents, in obedience to, and in pursuance of the said order, and likewise of the said notice in the *London Gazette*, as aforesaid, met at the *Guildhall* of the city of *London*, the day of in order to chuse an assignee of the said bankrupt's estate and effects and the major part of the creditors of the said *John Thomas* then present, and who had proved their debts under the said commission, and whose debts respectively amounted to 10*l.* or upwards, did nominate, elect and chuse the said *C. D.* to be the assignee of the estate and effects of the said *John Thomas*, remaining unreceived and not disposed of in the room of the said *Thomas Hopkins*. Now this indenture witnesseth, that in obedience to and in pursuance of the said recited order, and in order to vest the estate and effects of the said *John Thomas* in the said *C. D.* and *John Simpson* and their heirs, in trust for themselves and the rest of the creditors of the said *John Thomas*, in manner herein after mentioned, and for and in consideration of the sum of

10 s. a piece, of lawful money of Great Britain, to the said Thomas Hopkins, John Simpson, I. K. L. M. and N. O. in hand paid by the said C. D. at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged. They the said Thomas Hopkins and John Simpson (with the consent and by the direction of the said commissioners, parties to these presents, testified by their being made parties to and sealing and delivering hereof) have, and each of them hath granted, bargained, sold, released and confirmed, and by these presents do, and each of them doth grant, bargain, sell, release and confirm; and the said commissioners, parties to these presents, have ratified and confirmed, and by these presents do as much as in them lies, and they lawfully may, ratify and confirm unto the said C. D. (in his actual possession, now being by virtue of a bargain and sale to him thereof made by the said Thomas Hopkins and John Simpson, for 5 s. consideration, by indenture bearing date the day next before the day of the date of these presents, for one whole year commencing from the day next before the day of the date of the same indenture of bargain and sale, and by force of the statute made for transferring uses into possession) and to his heirs and assigns, all the said bankrupt's messuages, lands, tenements, and hereditaments, and also all the estate, right, title, interest, use, trust, property, possession, benefit, equity of redemption, claim and demand whatsoever, which he the said John Thomas, at the time of his becoming a bankrupt, as aforesaid, had of, in, or to, all and singular the said messuages, lands, tenements, hereditaments, and all and singular other the premises herein before mentioned, and hereby granted and released or mentioned or intended so to be, with their and every of their appurtenances. And also all other messuages, lands, tenements and hereditaments whatsoever and wheresoever

wheresoever which he the said *John Thomas* hath purchased or obtained for money or other recompence jointly with his wife, children or child, to the only use of him the said *John Thomas*; and also all such use, estate, interest, right and title whatsoever which he the said *John Thomas* had of, in, or to any messuages, lands, tenements or hereditaments whatsoever, at the time he became bankrupt as aforesaid, which he could depart withal, To have and to hold all and singular the said messuages, lands, tenements and hereditaments, with their and every of their appurtenances, unto the said *C. D.* and his heirs, to the use of the said *C. D.* and *John Simpson*, and their heirs and assigns for ever, or according to the right and interest of the said *John Thomas*, therein, subject to such mortgage or mortgages, or other charges and incumbrances (if any such there be) as the same are legally charged with and liable to, in trust nevertheless, for the benefit and advantage of them the said *John Simpson* and *C. D.* and all and every other the creditors of the said *John Thomas*, who already have come in, and sought relief, or shall hereafter in due time come in and seek relief by virtue of the said commission, or any renewed commission against the said *John Thomas*, and duly prove and ascertain their several and respective debts under the same according to the directions and limitations of the said statutes, and as to the overplus, if any shall be, after payment and satisfaction of all such debt or debts as shall or may be proved under the said commission, or any renewed commission against the said *John Thomas*, and the charges of suing forth and prosecuting the same, in trust for the said *John Thomas*, his heirs and assigns, according to the said statutes and the true intent and meaning thereof. And the said *John Simpson* and *C. D.* and each of them for himself, separate and apart, and for his own heirs, executors

and

and administrators acts and deeds, only, and not either of them for the other of them his heirs, executors or administrators acts or deeds, do hereby severally and respectively covenant, promise and agree to; and with the said commissioners, parties hereto by these presents in manner following, that is to say, that each of them the said *John Simpson* and their respective heirs and assigns, shall and will with all convenient speed use their best endeavours by suits at law or otherwise to recover and get possession of the said messuages, lands, tenements and hereditaments, and shall and will, after recovery and possession had of the same or any part thereof, make sale and disposition thereof with the like convenient speed to and for the most money and best price he or they can or may *bond fide* obtain for the same. And further that they the said *John Simpson* and *C. D.* their heirs, executors and administrators, shall and will from time to time and at all times hereafter, upon reasonable request or notice to them given for that purpose, under the hands of the commissioners, by the said commission or any renewed commission, authorized as aforesaid, or the major part of them, render and give to the said commissioners by the said commission, or any renewed commission, authorized as aforesaid, or the major part of them, a just and true account of all and every such sum and sums of money or other satisfaction which they the said *John Simpson* and *C. D.* their heirs, executors or administrators respectively, shall or may have received, obtained or ratified by virtue of these presents, out of the estate of the said *John Thomas*, hereby bargained and sold, and also such monies or other satisfaction as shall appear to be so by them respectively received, had, obtained, or raised by them, as aforesaid, they the said *John Simpson* and *C. D.* shall and will (after all just allowances thereout deducted) upon the like reasonable request well and truly pay, satisfy

satisfy and render, or cause to be paid, satisfied and rendered to them the said commissioners by the said commission, or any renewed commission, authorized as aforesaid, or the major part of them, or as they, or the major part of them, shall direct or appoint under their hands. To the end the same monies, or other satisfaction may be by them the said commissioners in and by the said commission, or any renewed commission authorized, or the major part of them ordered, disposed, distributed and divided unto and amongst all and every the creditors of the said *John Thomas*, who have already come in and sought relief, or shall hereafter in due time come in and seek relief by virtue of the said commission, according to the limitations of the said statutes therein mentioned, as aforesaid; to the end the same monies and other satisfaction may be answered and paid to the creditors seeking relief, as aforesaid, proportionably, according to their several debts due and owing to them respectively, from the said *John Thomas*, according to the order of dividend to be made by the said commissioners of the said commission, and until such monies shall be so disposed and divided, shall and will (according to the direction and appointment of the creditors of the said *John Thomas*) pay and deposit the same in the hands of ~~bankers~~ bankers, in *London*, as often as the same shall amount to the sum of 100 *l.* or upwards. And they the said *John Simpson* and *C. D.* for themselves severally and respectively, and for their several and respective heirs, executors and administrators, do further, covenant, promise and agree to, and with the commissioners parties hereto, and to and with every of them and their executors and administrators, that they the said *John Simpson* and *C. D.* their and each of their executors, administrators and assigns, shall and will from time to time, and at all times hereafter, well and sufficiently save, defend,

defend, keep harmless, and indemnified, as well the said commissioners, parties to these presents, in and by the said commission named and authorized, or by any renewed commission to be named or authorized, and their heirs, executors and administrators, and every of them, as their and every of their bodies, goods, chattels, lands and tenements, and every of them, their and every messengers, agents and servants, who have been by them or any of them employed in or about the execution of the said commission off, from and against all and all manner of actions, suits, troubles, charges, damages and expences whatever, that shall or may at any time or times hereafter arise, happen, or come unto them, the said commissioners, or any or either of them, or any of their messengers, agents, servants, heirs, executors or administrators, for or by reason or means of this present deed or any other act, matter or thing by them, or either or any of them lawfully acted or done, by virtue of the said recited commission, or by their or any of their lawful intermeddling in the estate or effects of the said *John Thomas*. And the said *Thomas Hopkins*, for himself, his heirs, executors and administrators, doth covenant and declare to and with the said *John Simpson* and *C. D.* their heirs and assigns by these presents, that the said *Thomas Hopkins* hath not at any time heretofore made, done, committed or executed, or wittingly or willingly permitted or suffered any act, deed, matter or thing whatsoever, whereby, wherewith, or by reason or means whereof the said messuages or tenements, lands, hereditaments and premises herein before mentioned to be hereby granted and released, or any part thereof, are, is, can, shall, or may be any ways incumbered or impeached in title, interest, charge, estate, or otherwise howsoever.

In witness, &c.

The

The statute 13 *Eliz.* was formed with a view to the commissioners making a specific assignment of the bankrupt's property among the creditors, and not a conveyance to some for the purpose of its being converted into money and distributed, which from its convenience soon became the mode adopted in practice, though not consonant to the intent and the provisions of the statute. The statute 5 *Geo.* 2. the present leading act concerning bankrupts, sanctions the practice, by directing the commissioners to convey to the assignees, but leaves the mode of conveyance to rest on the old statute 13 *Eliz.* which not having the idea of choosing assignees in view, is ill calculated to answer the purpose.

That act, by vesting all the bankrupt's property in the creditors to whom the commissioners assigned it, gives such creditors power to sue and to take all remedies for *choses* in action, &c. in their own names, in the same manner as the bankrupt himself, but does not seem to give any power to the creditors to assign these *choses* in action to others; and therefore a difficulty arises as to the mode of conveyance, where one assignee is removed. The 5th *Geo.* 2. takes notice of the single case of removing assignees, and the appointing of new ones; in which case the assignment by the old assignees to the new, is certainly made effectual. But the case of executors of assignees assigning to new ones, or of one assignee only being removed, and a new one appointed seems to be left entirely to the operation of the statute of *Eliz.* It seems difficult under this statute to contrive any mode of assignment which would give to a new assignee the power of suing for a *chose* in action, in his own name. The constant practice has been to make the old assignees join in a conveyance to the new appointed assignee and the remaining one, which seems liable to all the

the objections before stated, as well as that of a man's assigning to himself. This mode therefore could only have been adopted from the difficulty of pointing out any more eligible plan; and perhaps must still be adhered to, unless the legislature should interfere. The plan that seemed to be most reasonable was, to make the old assignees convey to a third person, in trust to reconvey to the old, and new appointed assignee; but as this method is liable to all the objections before stated, I have forbore to insert a precedent of that nature, thinking that that mode which has had the sanction of practice is more likely to be established, should it ever become a litigated question, though the objections are perhaps too strong for the inclinations of a court to get over.

However as these objections do not occur in the conveyance of real property, except as to such contingent interests in the bankrupt, as can only be conveyed by the bankrupt statutes, I have preferred the foregoing precedent. The statute 13 *Eliz.* requires no particular mode of conveyance; but as it directs the conveyance to be enrolled, it has been usual in practice to convey by a bargain and sale, and not by lease and release, to save the expence of enrolling a lease for a year; but as in the case of the appointing a new assignee, this would make two deeds necessary, because an use cannot be limited by a bargain and sale, I have drawn the conveyance by lease and release, in which by conveying to the new assignee, to the use of himself and the remaining assignee, the estate will, by the operation of the statute, of uses, be as effectually vested in them, as if the conveyance had been made to a third person, in trust to re-convey to them both.

Charles

Charles Jones, the petitioning Creditor of Francis Gibbons, Bankrupt, Debtor to John Rayner, for the Costs of suing out and prosecuting a Commission of Bankrupt against the said Francis Gibbons.

	£.	s.	d.
Attending the petitioning creditor for instructions	0	6	8
Drawing and engrossing affidavit * of debt, duty, and oath	0	6	0
Bond to the great seal and duty §	0	6	0
Petition to great seal for commission	0	14	0
Paid for commission	11	1	2

* If the affidavit is made by several creditors, the solicitor is to be allowed more, according to the extraordinary length occasioned thereby.

§ The secretary of bankrupt's bill for getting the commission past the great seal, should, it seems, consist of the following articles only, viz.

	£.	s.	d.
Bond and duty	0	6	0
Petition for commission and duty	0	7	0
Secretary's fee, and filing affidavit	1	3	0
Commission and hanaper fee	4	18	0
Private seal	2	2	0
Messenger, if necessary	2	2	0
Office copy of petitioning creditor's affidavit, (according to length) usually about	0	3	2
	11	1	2

Solicitor's

	£.	s.	d.
Solicitor's fee on suing it out	1	0	0
Paid sheriff's officer attending to prove bankrupt's arrest	1	1	0
Paid clerk of the papers of the <i>King's Bench</i> prison attending to prove how long bankrupt had been detained in the custody of the marshal of that prison [or clerk of the papers of the <i>Fleet</i> prison]	1	1	0
Paid the commissioners 20s. a-piece at first meeting, on party being found bankrupt	3	0	0
Solicitor attending with the commission and proceedings	1	0	0
Paid commissioners signing certificate that party was declared bankrupt, in order to procure a warrant from a judge or justice of peace, for his apprehension and commitment	3	0	0
Solicitor preparing the same, and attending thereon	1	0	0
Drawing provisional assignment	1	1	0
Ingrossing and counterpart	1	1	0
Parchment and duty	0	8	0
Paid commissioners executing the same	3	0	0
Solicitor attending	1	0	0
Paid commissioners signing certificate, that petitioning creditor had proved his debt, in order to see bankrupt prisoner	3	0	0
Solicitor preparing the same, and attending	1	0	0
Paid commissioners on their first sitting at <i>Guildhall</i>	3	0	0
Solicitor preparing depositions and proceedings	1	0	0
Paid commissioners on second sitting at <i>Guildhall</i>	3	0	0
Solicitor preparing depositions and proceedings	1	0	0
Drawing			

Appendix of Precedents

ccxxiii

Drawing assignment two skins (being a confirmation of the provisional assignment)	£. s. d.
	2 2 0
Ingrossing and counterpart	2 2 0
Parchment and stamp	0 16 0
Paid commissioners executing the same	3 0 0
Solicitor attending	1 0 0
Drawing bargain and sale, two skins	2 2 0
Ingrossing it in two parts	2 2 0
Parchment and stamp	0 16 0
Paid commissioners executing the same	3 0 0
Solicitor attending	1 0 0

When the bill has been perused and allowed by the commissioners, the solicitor must underwrite the following order for payment thereon, viz.

At, &c.

2d day of June, 1780.

We whose names are hereunto subscribed, being the major part of the commissioners named and authorised in and by a commission of bankrupt awarded and issued, and now in prosecution against *Francis Gibbons*, of, &c. having inspected the above bill of charges and disbursements, do tax and ascertain the same at the sum of

And we do hereby direct and order *John Partridge* and *Charles Dennis*, the assignees of the estate and effects of the said bankrupt, to pay the sum of

out of the first monies or effects of the said bankrupt, that shall be got in and received

ceived under the said commission; Witness our hands the day and year, and at the place above mentioned.

Sylvester Douglas,
Isaac Bargrave,
William Munn.

Thomas Powell, *the Messenger's Bill on the Commission against Francis Gibbons.*

	£.	s.	d.
Summoning and attending the commissioners to coffee-house	0	10	0
Paid for room, pens, ink, and paper	0	3	0
Warrant of seizure, stamp and tin-box	0	5	0
Executing * warrant at a bankrupt's house	0	13	4
Coach or horse hire, what actually paid, if necessary	-	-	-
Summoning bankrupt to surrender, duplicate thereof, and serving the same	0	5	0
Writing advertisement, and attending Gazette therewith	0	2	6
Paid Gazette	0	12	6
Appraisement of the household goods and stock in trade by two † persons, and fair copy of inventory	1	1	0

* In this charge is included the keeping possession the day the warrant is executed; and for executing the warrant in any other house or place, besides the first, (including the keeping the possession the first day) for each place, 6 s. 8 d.

† For each day they are necessarily employed in appraising same, to each of them 10 s. 6 d.

Warrant

Schedules of Disbursements.

CCXXV

	£.	s.	d.
Warrant to summon witnesses, attending commissioners to sign same, writing summonses for the witnesses, and serving them there-with	0	6	8
Summoning and attending the commissioners on their first sitting at <i>Guildhall</i>	0	6	8
Paid for hall, pens, &c.	0	3	0
Summoning and attending commissioners at their second sitting	0	6	8
Paid for hall, pens, &c.	0	3	0
Possession • sixteen days, at 5 s. each day	4	0	0
Summoning and attending the commissioners at coffee-house, to execute assignment	0	6	8
Paid for rooms, pens, &c.	0	3	0
Same to execute bargain and sale	0	9	8

There must be proper dates, and the like order of the commissioners for payment, as on the clerk to the commission's bill; *mutatis mutandis*.

• And for keeping possession of the bankrupt's effects, in every such other house or place besides the first, for each day after the day of seizure to the day of the choice of assignees inclusive, including what the messenger pays his man, 3 s. 4 d.

*Memorandum of executing Assignment, and settling the
Debts of the said Bankrupt.*

At, &c.

Memorandum, That we whose names are hereunto sub-
scribed, being the major part of the commissioners, named
and authorized, in and by a commission of bankrupt
awarded and issued against *Francis Gibbons, of, &c.* met
the day and year, and at the place above mentioned, and
examined and executed an assignment of the said bank-
rupt's estate and effects to *John Partridge, of, &c.* and
Charles Dennis, of, &c. being assignees chosen under the
said commission; and at the same time taxed and settled
(or ascertained and allowed) the petitioning creditor's
charges and expences of suing out and prosecuting the said
commission to this time, viz: the solicitor's bill at the sum
of *£100* and the messenger's bill at the
sum of *£10* making together the
sum of *£110*

Drawing affidavit of seeing the creditors list
in the court copy to send down
Paid commissions meeting to allow the certificate
Sydney Douglas,
John Bargrave,
William Mann.
Solicitor
Paid expences in ditto manner his name
Paid the messenger for summoning and attending
the commissioners, and for the room
Order for publication in the Gazette
Drawing advertisement and copy
Paid publication in the Gazette
Messenger attending Secretary and Gazette
Drawing

SCANN

Bill for a Bankrupt's Certificate.

examined and executed in accordance with the said bank
of the year, and at the place above mentioned, and
awarded and issued against certain orders of the said
and authorized in and by a commission of banking
the major part of the communists, named
I have the honor to inform that we have received from
the Secretary on the

Drawing and engrossing certificate

Duty and parchment for ditto.

Perusing all the proceedings under the commission, and drawing out a list of the persons who had proved debts and settling the same, as to the persons intitled to sign the certificate and fair copy - - - 0 6 8

Attending at several places to see the town creditors sign the certificate

Drawing affidavit of seeing the creditors sign
in the country, and fair copy to send down 0 3 6

Paid commissioners meeting to allow the certifi-				
cate	M	-	-	3 0 0

Solicitor

Paid expences in ditto	-	-	8	1	8
------------------------	---	---	---	---	---

Paid the messenger for summoning and attending the commissioners, and for the room.	0	0	8
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Order for publication in the Gazette 0 3 6

Drawing advertisement and copy	0	3	4
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Paid publication in the Gazette

Messengers attending secretary and Gazetteer	0	6	8
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Drawing

iii
 10

d. s. d.

Drawing and engrossing bankrupt's affidavit of conformity, duty and oath	0	6	6
Paid secretary's fees for allowance of certificate	2	2	6
Messenger's attendance on secretary on the confirmation	0	6	8
John Scott, Esq. No. 8, Coney Court, Gray's Inn	0	6	8
Robert Alderley, Esq. No. 9, King's Bench Walks, Temple			
Samuel Denton, Gent. Featherstone Buildings			
William Gifford, Esq. Gray's Inn			
Hugh Kesteven, Esq. Lincoln's Inn, New Square			
William Dowdewell, Esq. Farrer's Buildings, Temple			
John W. R. R. Esq. No. 1, Crown Office Road			
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Solicitor			
Paid expenses in ditto			
William Bumpsted, Esq. No. 4, Holborn Court, Gray's Inn			
Henry Hunter, Esq. Holborn Row, Lincoln's Inn Fields			
Henry Russell, Esq. No. 6, Lincoln's Inn, New Square			
James Burroughs, Esq. Bowell Court, Carey Street			
Richard			

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Treasury List.

Michael Dodder, Esq. Botwell Court
Thomas Plummer, Esq. No. 20, Lincoln's Inn Old Buildings
Jeremy Pemberton, Esq.
Edward



IN THE COURT OF CHANCERY

Sheweth

That the said Robert Corry, Esq. No. 2

I N D E X

David Corry, Esq. Plaintiff, v. Robert Corry, Esq. Defendant

That the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

How the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

And that the said Robert Corry, Esq. Defendant, has been guilty of certain wrongs to the said David Corry, Esq. Plaintiff, and that the said David Corry, Esq. Plaintiff, is entitled to certain remedies in respect of the said wrongs.

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